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ABSTRACT

This report contains transcripts of testimonies and prepared statements presented at a session of the Subcommittee on Civil and Constitutional Rights. The session was convened to conduct hearings on the civil rights implication of the education block grant program proposed by the Reagan Administration. Statements of the following witnesses are included: (1) Cynthia G. Brown, codirector of the Equality Center (Washington, D.C.); (2) Samuel Husk, executive director of the Council of Great City Schools (Washington, D.C.); (3) Lee McMurrin, Superintendent of the Milwaukee (WI) Public Schools; and (4) Eugene Reville, Superintendent of the Buffalo (NY) Public Schools. Gary Orfield, of the University of Chicago (IL), also gave testimony and presented two prepared statements entitled "Desegregation of Black and Hispanic Students from 1968 to 1980," and "Why Are Illinois Schools the Most Segregted?" A letter from Congressman William F. Goodling to Howard Simons, managing editor of the "Washington Post," is included in the report, as well. (AOS)

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CIVIL RIGHTS IMPLICATION OF THE EDUCATION BLOCK GRANT PROGRAM

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

CIVIL RIGHTS IMPLICATION OF THE EDUCATION BLOCK GRANT PROGRAM

SEPTEMBER 9, 1982

Serial No. 83

U.S. DEPARTMENT OF EDUCATION
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CIVIL RIGHTS IMPLICATIONS OF THE EDUCATION BLOCK GRANT PROGRAM

THURSDAY, SEPTEMBER 9, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:40 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Washington, Sensenbrenner, Lungren, and Shaw.

Staff present: Ivy L. Davis, assistant counsel; and Thomas M. Boyd, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

In 1954, our Supreme Court finally and boldly announced what has remained our national policy; a national policy which says apartheid is legally and morally wrong and will not be supported by our Federal Government.

Desegregated, free public education, like the right to vote, is so fundamental to our concept of liberty that any effort to deny it or diminish its quality will ultimately undermine our very foundation.

The demand to end school segregation led to the demand to end segregation in public accommodations, employment, and housing. Desegregation based on race, national origin, sex, handicap, and age are now all included as part of our national goal. Yet, almost three decades later, the task to dismantle dual school systems remains.

We know we can achieve this goal because we have been successful in the South where the civil rights struggle began. We were successful there because of a strong Federal presence and commitment by each branch of our National Government.

That commitment was short lived and began to wane as the struggle moved to the other regions of the country. Now we are losing the battle in those regions. That is evidenced from a review of desegregation trends over the past decade contained in a report by the Joint Center for Political Studies.

Statements by President Reagan and administration representatives have caused concern over the continued Federal commitment to school desegregation. The Justice Department, contrary to earlier declarations, has now asked a district court to reconsider a previous desegregation order in which busing was part of the remedial relief granted; and, the education block grant program advocated

by the administration, as predicted by civil rights advocates, has drastically diminished Federal support formerly available to school districts undergoing voluntary and court-ordered desegregation plans.

Is it possible the disastrous results of the education block grant program could have been avoided with better guidance set forth in the regulations promulgated on July 29 of this year? Comments of civil rights advocates and school districts advised the Department of Education to provide such guidance to assure civil rights compliance.

We will review the civil rights implications of the block grant program at today's hearing and hope that this discussion and recommendations will find their way into the discussions of existing and proposed program discussions to assure civil rights is an element of every Federal program.

I now yield to the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I think I would be remiss in my obligations if I did not express my concern about the manner in which this hearing is being held this morning, and also the subject matter of the hearing.

The hearing is basically designed to look into the implementation of the Education Consolidation and Improvement Act of 1981 and the block grant concept that was contained therein. Tnis committee does not have jurisdiction over this act, it does not have jurisdiction over education programs and education aid programs insofar as they relate to the relationship between the Federal Government and public school districts around the country.

That jurisdiction clearly lies within the Committee on Education and Labor rather than the Committee on the Judiciary.

Now, while it is true the Committee on the Judiciary does have jurisdiction over civil rights legislation generally, I think that it requires a great stretching of the imagination to call an oversight hearing into the administration of block grants under an education act but saying this is very clearly a civil rights issue.

Second, I have to express a protest over the fact that the witnesses did not supply their testimony to at least the minority on this subcommittee pursuant to House rules. Rule 11, clause 2, paragraph 4 very clearly states that all witnesses must supply 35 copies of their testimony at least 48 hours prior to their appearance.

Now, our minority staff received copies of the testimony of two of the witnesses of today's hearings last night, just before everybody went home. Two of the witnesses' testimony arrived this morning, and one has not yet even been received, so none of the five witnesses at today's hearing are in compliance with the rule that I just cited, and that makes it extremely difficult for the minority to intelligently participate in this hearing, since in many cases we have not had time to review the testimony of the witnesses and to draft questions based thereon.

Now, finally, relating to the home State of myself and my colleague from Wisconsin, Mr. Kastenmeier, I am a little bit upset over a story which appeared in the New York Times of Tuesday, September 7, 1982, and which quotes one of our witnesses today, Milwaukee School Superintendent Lee McMurrin, stating that the

sharp cut in Federal aid, "forces school districts to mandatory busing, which is the cheapest and in many cases the most miserable way to integrate schools."

That, in my opinion, is a threat that is being made to this Congress, and I think it is particularly irresponsible, Mr. McMurrin, for you to make that kind of a statement when you know that the Wisconsin Legislature passed a law, which I cosponsored, giving additional State aid to voluntary parent-approved school transfer programs with reduced racial segregation, both within your school district and tranfers between your school district and the suburban school district surrounding it.

Furthermore, the State legislature has, in my opinion, unfortunately passed a limitation on how much you can increase your budget on a year-to-year basis, so if your budget can't go up and you can't qualify for the State aid given specifically to school districts like Milwaukee under chapter 220 of the Wisconsin laws of 1975.

I think it is irresponsible for you to say the Federal Government is to blame for going back to a mandatory busing program, when at least many of the factors involved are factors that can be handled quite easily in Madison, Wis., rather than in the Congress of the United States.

So, all in all, I think that this hearing was ill-timed. The subject matter is not really within the jurisdiction of the committee unless one is taking jurisdiction expanding drugs, like mind expanding drugs are taken by some others.

And I also think that really the deck is kind of stacked in looking at some of the quotes that have appeared in the New York Times just 2 days before this hearing.

I yield back the balance of my time.

Mr. EDWARDS. I thank the gentleman and will point out that all of the statements were received by the majority members at the same time as the minority.

I yield to the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or in part, by television broadcast, radio broadcast, and still photography, in accordance with committee rule 5.

Mr. EDWARDS. Without objection, it is so ordered.

Mr. KASTENMEIER. Mr. Chairman, I want to compliment the Chair on calling this particular subject as a matter of hearing because obviously the question of public school desegregation, that is, the civil rights implications of it in terms of Federal programs, is, in my view, a part of the general overall purview of this committee, even though the specific programs are not precisely implemented by this committee.

I think this hearing can be very useful in that connection. I regret only, Mr. Chairman, that I cannot be here as my own subcommittee is meeting concurrently with yours, and I must excuse myself.

I have read the statements, I read the statement of Dr. Lee McMurrin, who comes from Milwaukee, the superintendent of the public schools there. I support his general thesis and obviously, I

have serious technical and policy disagreements with my colleague from Wisconsin, Mr. Sensenbrenner.

Mr. EDWARDS. I thank the gentleman.

We welcome our first witness, Cynthia G. Brown, codirector of the Equality Center, Washington, D.C.

Ms. Brown, without objection, your entire statement will be made a part of the record, and you may proceed.

TESTIMONY OF CYNTHIA G. BROWN, CODIRECTOR, THE EQUALITY CENTER, WASHINGTON, D.C.

Ms. BROWN. Good morning, Mr. Chairman and members of the subcommittee.

My name is Cynthia G. Brown, and I am codirector of the Equality Center, a recently established nonprofit organization to advance human and civil rights. Among other things, the Equality Center engages in research and analysis of issues of importance to low-income families and individuals, minorities, women and the disabled.

I was formerly the Assistant Secretary for Civil Rights in the U.S. Department of Education. In that capacity, I directed the activities of the Office for Civil Rights which included administration of the civil rights provisions of the Emergency School Aid Act [ESAA].

I appreciate the opportunity to discuss with you the past importance of ESAA, which has been one of the most effective tools in the Federal civil rights enforcement process. The consolidation of ESAA into chapter 2 of the Education Consolidation and Improvement Act of 1981 has resulted in several negative consequences for minority and nonminority youngsters in our elementary and secondary schools: Reduction in funds needed to support the implementation of school desegregation plans and to maintain successful school desegregation programs in their initial years of operation; elimination of a unique civil rights program which, through a carrot-and-stick approach, often resulted in faster elimination of serious discrimination problems than title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; and withdrawal of the congressionally mandated Federal goal not only to assist in the desegregation process, but also to encourage the voluntary elimination, reduction, or prevention of minority group isolation.

In many ways, ESAA was a model statute. I would like to take time this morning to explain how the civil rights provisions of ESAA worked, why they were important, and what impact they had.

The Emergency School Aid Act was enacted by Congress in 1972 to provide financial assistance to desegregating school districts. It was an annual grant program of approximately $250 million administered first by the Office of Education in the Department of Health, Education, and Welfare, and subsequently in the Department of Education.

Unlike virtually all other grant programs, ESAA contained strict civil rights provisions that had to be satisfied before a grant could be made, the carrot and the stick. Specifically, a school district was

not eligible for a grant if it had committed one or more of the following acts since 1972:

One, discrimination on the basis of race or national origin in the hiring, promotion, or assignment of teachers; two, discrimination on the basis of race or national origin against students within schools, for example, discriminatory discipline policies or practices; segregated extracurricular activities; assignment of students to racially isolated classrooms, with the exception of educationally justified and objectively determined ability grouping; three, discrimination against non- or limited-English-speaking students; or four, transfer of equipment or supplies to private, segregated academies.

Each of these so-called second generation problems often appear in desegregating school districts. In addition, the courts and the Departments of HEW and Education interpreted ESAA as prohibiting financial assistance to school districts whose desegregation plans did not correct illegal segregation by a Federal court or the Departments' Office for Civil Rights.

The act required a district that had committed any of the specified violations to correct them before the district could obtain Federal funds. Specifically, ESAA required that the discrimination cease to exist before the Secretary could grant a waiver of ineligibility. If the Secretary granted the waiver, the funds could be awarded.

The Office for Civil Rights administered the civil rights provisions of ESAA. Each year, approximately 1,500 school districts submitted applications for the 8 ESAA subprograms. Every school district application was reviewed by the Office for Civil Rights, which then made a determination as to whether the school district had an eligible school desegregation plan and was in compliance with the ESAA civil rights provisions. Each year, the Office for Civil Rights investigators conducted several hundred onsite reviews to determine applicant school districts' compliance status with title VI.

When the Office for Civil Rights found a civil rights violation, the Department of Education—previously HEW—declared the school district ineligible to receive an ESAA grant and gave it an opportunity for a show cause hearing and/or to apply for a waiver of ineligibility. At a show cause hearing, the applicant attempted to show that the facts upon which the Office of Civil Rights made a determination of ineligibility were erroneous. If it succeeded, a waiver of ineligibility was granted and the district's eligibility for funds was restored. If it did not succeed, or did not seek a hearing, it could apply for a waiver of ineligibility by submitting a plan to correct the discriminatory practice, which in most instances was done. If the corrective action plan caused the violation to cease to exist by the opening of the school year, or at the time of the funds award, if later, the Secretary would grant the waiver of ineligibility.

Linking a civil rights clearance procedure to an annual grant program directed to crucial needs, as in ESAA, resulted in a very efficient and effective civil rights program. The program was effective because:

One, school districts had to correct their civil rights problems before they got the Federal money. Most school boards and school

officials in districts undergoing desegregation had a strong incentive to correct civil rights violations quickly because they saw the programs which could be funded under ESAA as essential for successful integration. Extra State or local funds usually were not available for such ESAA-supported activities as desegregation planning, human relations training for teachers, special programs to encourage parent participation, development of multiracial and multiethnic curriculum materials, special organized activities in which minority and nonminority students could work and play together, and magnet schools.

Two, there were strict timeframes to which the Office of Civil Rights had to adhere. The Office for Civil Rights has a notorious record, which was especially bad between 1970 and 1976, of delay in resolving complaint and compliance review investigations of discrimination.

Because of this pattern of performance, most of the Office's operations are directed by a December 1977 order entered into three law suits: *Adams* v. *Bell,* filed in 1970; *Women's Equity Action League, et al.,* v. *Bell,* filed in 1974; and *Brown* v. *Bell,* filed in 1975. However, the pressure of annual grant awards tied to affirmative civil rights clearances, resulted in the development of an efficiently managed ESAA program, if nothing else, in the Office for Civil Rights by the mid-1970's.

Three, the ESAA civil rights clearance process forced the Office for Civil Rights to focus attention on many of the problems of children from low-income families and non-English-speakers, about whom the Office received few complaints under title VI.

While OCR investigates complaints it receives, few are ever received about the lack of bilingual education programs, discriminatory suspension and expulsion practices, or disproportionate assignment of blacks to classes for the educable mentally retarded—data gathered from 16,000 school districts for the 1978–79 school year by the Office for Civil Rights showed that the rate of participation of black students in EMR classes was 3.5 times greater than the rate for white students. In fiscal year 1980 alone, through the ESAA process, the Office for Civil Rights secured 33 acceptable bilingual education plans, 18 corrective action plans addressing misplacements of minority students in EMR programs, and 5 plans correcting racially discriminatory discipline procedures and practices.

Four, the ESAA process resulted in regular attention by the Office for Civil Rights to the civil rights problems in those school systems with the largest concentrations of minority group students.

Most school districts with significant proportions of minority students applied for ESAA funds. Consequently, elimination of the civil rights requirements of ESAA means that the discrimination problems affecting minorities in elementary and secondary schools are much less frequently addressed by the Federal Government than before. This is a serious loss because ESAA activity was a significant proportion of the Office for Civil Rights' work on the discrimination problems faced by racial and ethnic minorities. The majority of Office for Civil Rights' investigative activity was on ESAA and complaint investigations.

In recent years, the Office for Civil Rights has received and resolved a lower proportion of title VI complaints than complaints

under either title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, and section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap. For example, over the 3-year period of fiscal years 1980, 1981 and 1982, the Office for Civil Rights resolved 1,021 section 504 complaints, 343 title IX complaints, and 248 title VI—181 race and 67 national origin—complaints at the elementary and secondary school level. Also, 91 combination complaints were resolved.

There is no question that the existence of the ESAA program provided access and triggered educational improvements for minority students faster than would have otherwise been possible. ESAA was a carrot for compliance used not only by the executive branch but by Federal judges as well as they enforced the 14th amendment to the Constitution.

Attached to this testimony is a chart showing the issues for which corrective action plans under ESAA were secured and waivers of ineligibility for ESAA funds granted over its last 4 years. Perhaps the most significant result was the 148 bilingual education plans negotiated through the ESAA process. Other significant results from enforcement of the ESAA civil rights provisions not evident from the chart include:

The almost total elimination of discrimination in the assignment of teachers. Because of the availability of ESAA funds, cities like Los Angeles, Cleveland, and Philadelphia desegregated their teaching staff while the issue of student desegregation was still pending in the courts.

The prevention of the transfer of public school books and equipment to segregated private academies, which were established so that white students would not have to attend desegregated schools. In financially poor, low tax-base school districts, especially in the rural South, the availability of ESAA funds and its civil rights requirements prohibiting aid to such schools helped to retard the growth of these academies.

From a civil rights enforcement perspective, the consolidation of ESAA into chapter 2 of the Education Consolidation Improvement Act of 1981 eliminated a very effective tool for reducing racial and ethnic discrimination. I hope this subcommittee and Congress as a whole will evaluate closely the history of ESAA and reconsider the potential of this type of carrot-and-stick approach to civil rights enforcement.

I think it will find the ESAA compliance mechanism was a success, not a failure. It could be a model for future civil rights enforcement efforts.

Thank you, and I would be glad to answer any questions.

Mr. EDWARDS. Thank you very much, Ms. Brown, for a very excellent historical analysis of this program.

[The statement of Ms. Brown follows:]

PREPARED STATEMENT OF CYNTHIA G. BROWN

Mr. Chairman and Members of the Subcommittee, my name is Cynthia G. Brown. I am the Co-Director of The Equality Center, a recently established non-profit organization to advance human and civil rights. Among other things, The Equality

Center engages in research and analysis of issues of importance to low-income families and individuals, minorities, women, and the disabled.

I was formerly the Assistant Secretary for Civil Rights in the U.S. Department of Education. In that capacity, I directed the activities of the Office for Civil Rights which included administration of the civil rights provisions of the Emergency School Aid Act (ESAA).

I appreciate the opportunity to discuss with you the past importance of ESAA, which has been one of the most effective tools in the federal civil rights enforcement process. The consolidation of ESAA into Chapter II of the Education Consolidation and Improvement Act of 1981 has resulted in several negative consequences for minority and non-minority youngsters in our elementary and secondary schools.

Reduction in funds needed to support the implementation of school desegregation plans and to maintain successful school desegregation programs in their initial years of operation;

Elimination of a unique civil rights program which through a "carrot and stick" approach, often resulted in faster elimination of serious discrimination problems than Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin; and

Withdrawal of the congressionally mandated federal goal not only to assist in the desegregation process, but also to encourage the voluntary elimination, reduction, or prevention of minority group isolation.

In many ways, ESAA was a model statute. I would like to take time this morning to explain how the civil rights provisions of ESAA worked, why they were important, and what impact they had.

ESAA CIVIL RIGHTS PROVISIONS

The Emergency School Aid Act (ESAA) was enacted by Congress in 1972 to provide financial assistance to desegregating school districts. It was an annual grant program of approximately $250 million administered first by the Office of Education in the Department of Health, Education, and Welfare and subsequently in the Department of Education.

Unlike virtually all other grant programs, ESAA contained strict civil rights provisions that had to be satisfied before a grant could be made—the carrot and the stick. Specifically, a school district was not eligible for a grant if it had committed one or more of the following acts since 1972:

Discrimination on the basis of race or national origin in the hiring, promotion, or assignment of teachers;

Discrimination on the basis of race or national origin against students within schools (e.g. discriminatory discipline policies or practices; segregated extra-curricular activities; assignment of students to racially isolated classrooms, with the exception of educationally justified and objectively determined ability grouping);

Discrimination against non- or limited English-speaking students; or

Transfer of equipment or supplies to private, segregated academies.

Each of these so-called "second generation" problems often appear in desegregating school districts. In addition, the courts and the Departments of HEW and Education interpreted ESAA as prohibiting financial assistance to school districts whose desegregation plans did not correct illegal segregation found by a Federal court or the Departments' Office for Civil Rights.

The Act required a district that had committed any of the specified violations to correct them before the district could obtain Federal funds. Specifically, ESAA required that the discrimination "cease to exist" before the Secretary could grant a "waiver of ineligibility." If the Secretary granted the waiver, the funds could be awarded.

The Office for Civil Rights administered the civil rights provisions of ESAA. Each year approximately 1,500 school districts submitted applications for the 8 ESAA subprograms. Every school district application was reviewed by the Office for Civil Rights, which then made a determination as to whether the school district had an eligible school desegregation plan and was in compliance with the ESAA civil rights provisions. Each year, Office for Civil Rights investigators conducted several hundred on-site reviews to determine applicant school districts' compliance status with Title VI.

When the Office for Civil Rights found a civil rights violation, the Department of Education (previously HEW) declared the school district ineligible to receive an ESAA grant and gave it an opportunity for a "show cause" hearing and/or to apply for a waiver of ineligibility. At a show cause hearing the applicant attempted to show that the facts upon which the Office for Civil Rights made a determination of

ineligibility were erroneous. If it succeeded, a waiver of ineligibility was granted and the district's eligibility for funds was restored. If it did not succeed, or did not seek a hearing, it could apply for a waiver of ineligibility by submitting a plan to correct the discriminatory practice. If the corrective action plan caused the violation to "cease to exist" by the opening of the school year—or at the time of the funds award, if later—the Secretary would grant the waiver of ineligibility.

IMPORTANCE OF THE ESAA CIVIL RIGHTS PROVISIONS

Linking a civil rights clearance procedure to an annual grant program directed to crucial needs, as in ESAA, resulted in a very efficient and effective civil rights program. The program was effective because:

1. School districts had to correct their civil rights problems before they got the Federal money. Most school boards and school officials in districts undergoing desegregation had a strong incentive to to correct civil rights violations quickly because they saw the programs which could be funded under ESAA as essential for successful integration. Extra state or local funds usually were not available for such ESAA-supported activities as desegregation planning, human relations training for teachers, special programs to encourage parent participation, development of multi-racial and multi-ethnic curriculum materials, special organized activities in which minority and non-minority students could work and play together, and magnet schools.

2. There were strict time-frames to which the Office for Civil Rights had to adhere. The Office for Civil Rights has a notorious record, which was especially bad between 1970 and 1976, of delay in resolving complaint and compliance review investigations of discrimination. Because of this pattern of performance, most of the Offices' operations are directed by a December 1977 order entered into three lawsuits—*Adams* v. *Bell* (filed in 1970), *Women's Equity Action League et al.* v. *Bell* (filed in 1974), and *Brown* v. *Bell* (filed in 1975). However, the pressure of annual grant awards tied to affirmative civil rights clearances, resulted in the development of an efficiently managed ESAA program, if nothing else, in the Office for Civil Rights by the mid-1970's.

3. The ESAA civil rights clearance process forced the Office for Civil rights to focus attention on many of the problems of children from low-income families and of non-English-speakers, about whom the Office received few complaints under Title VI. While OCR investigates complaints it receives, few are ever received about the lack of bilingual education programs, discriminatory suspension and expulsion practices, or disproportionate assignment of blacks to classes for the Educable Mentally Retarded (EMR) (Data gathered from 16,000 school districts for the 1978–79 school year by the Office for Civil Rights showed that the rate of participation of black students in EMR classes was 3.5 times greater than the rate for white students.) In FY 1980 alone, through the ESAA process the Office for Civil Rights secured 33 acceptable bilingual education plans, 18 corrective action plans addressing misplacements of minority students in EMR programs, and 5 plans correcting racially discriminatory discipline procedures and practices.

4. The ESAA process resulted in regular attention by the Office for Civil Rights to the civil rights problems in those school systems with the largest concentrations of minority group students. Most school districts with significant proportions of minority students applied for ESAA funds. Consequently, elimination of the civil rights requirements of ESAA means that the discrimination problems affecting minorities in elementary and secondary schools are much less frequently addressed by the Federal government than before. This is a serious loss because ESAA activity was a significant proportion of the Office for Civil Rights' work on the discrimination problems faced by racial and ethnic minorities. The majority of Office for Civil Rights' investigative activity was on ESAA and complaint investigations.

In recent years the Office for Civil Rights has received and resolved a lower proportion of Title VI complaints than complaints under either Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap. For example, over the three year period of Fiscal Years 1980, 1981, and 1982, the Office for Civil Rights resolved 1021 Section 504 complaints, 343 Title IX complaints, and 248 Title VI (181 race and 67 national origin) complaints at the elementary and secondary school level. (Ninety-one (91) "combination" complaints were also resolved.)

IMPACT OF ESAA CIVIL RIGHTS PROVISIONS

There is no question that the existence of the ESAA program provided access and triggered educational improvements for minority students faster than would have

otherwise been possible. ESAA was a carrot for compliance used not only by the Executive Branch but by Federal judges as well as they enforced the Fourteenth Amendment to the Constitution.

Attached to this testimony is a chart showing the issues for which corrective action plans under ESAA were secured and waivers of ineligibility for ESAA funds granted over its last four years. Perhaps the most significant result was the 148 bilingual education plans negotiated through the ESAA process. Other significant results from enforcement of the ESAA civil rights provisions not evident from the chart include:

The almost total elimination of discrimination in the assignment of teachers. Because of the availability of ESAA funds, cities like Los Angeles, Cleveland, and Philadelphia desegregated their teaching staff while the issue of student desegregation was still pending in the courts.

The prevention of the transfer of public school books and equipment to segregated private academies, which were established so that white students would not have to attend desegregated schools. In financially poor, low tax-base school districts (especially in the rural south), the availability of ESAA funds and its civil rights requirements prohibiting aid to such schools helped retard the growth of these academies.

CONCLUSION

From a civil rights enforcement perspective, the consolidation of ESAA into Chapter II of the Education Consolidation Improvement Act of 1981 eliminated a very effective tool for reducing racial and ethnic discrimination. I hope this subcommittee and Congress as a whole will evaluate closely the history of ESAA and reconsider the potential of this type of "carrot and stick" approach to civil rights enforcement. I think it will find the ESAA compliance mechanism was a success, not a failure. It could be a model for future civil rights enforcement efforts.

CIVIL RIGHTS PROBLEMS OF ESAA APPLICANTS FOR WHICH CORRECTIVE ACTION PLANS WERE SECURED AND ESAA WAIVERS OF INELIGIBILITY GRANTED (FISCAL YEAR 1978 THROUGH FISCAL YEAR 1981)

Discriminatory practices	Fiscal year—			
	1978	1979	1980	1981
Bilingual education	72	27	33	16
Misplacement in EMR	12	16	18	10
Racially indentifiable classes	24	13	17	11
Employment discrimination	(1)	8	9	2
Teacher assignment	15	6	5	13
Discipline	(1)	5	5	3
Other	41	9	9	5
Total [2]	164	84	96	60
Waivers granted [2]	106	57	62	41

[1] In fiscal year 1978, "employment discrimination" and "discipline" were included in "other."
[2] Total number of discriminatory practices sums to more than number of waivers granted because some school districts engaged in more than one type of discriminatory practice.

Mr. EDWARDS. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I would like to continue an historical analysis perhaps. Ms. Brown, I am informed that you were the Assistant Secretary for Civil Rights in the Department of Education during the Carter administration, am I correct in that?

Ms. BROWN. Yes.

Mr. SENSENBRENNER. It seems to me that the funding for ESAA was substantially reduced during the last 2 years of the Carter administration. The fiscal year 1979 appropriation was $300.5 million. That was dropped to $149.2 million for fiscal year 1981.

Am I correct in those figures?

Ms. BROWN. Mr. Sensenbrenner, I really can't speak to that. I was responsible for the civil rights enforcement part of ESAA. The whole granting mechanism and the development of the budget and the review of ESAA proposals was handled by the Division of Equal Educational Opportunity in the Elementary and Secondary Education Office.

I have no reason to disagree with your figures.

Mr. SENSENBRENNER. It seems to me most of the complaints we are hearing is that the block grant proposal that was passed in 1981 has resulted in substantially reduced funding to local school districts to finance desegregation projects and that that is causing them to look for cheaper and perhaps less palatable alternatives.

The argument is made that Congress can solve all of these problems merely by appropriating more money. I guess the point that has to be made is that the Carter administration apparently felt that major funding for ESAA was not a top priority, witness the fact that in the last 2 years of that administration, the appropriation was slashed in half.

There was an article in the July 27 issue of the Washington Post by Charles Babcock entitled "Cuts in Block Grants Complicate Funding Alternatives to Busing."

Congressman Goodling of Pennsylvania sent a letter to the editor of the Post which pointed out that the cuts in funding under ESAA predated the block grant concept and predated the assumption of office by this administration.

Unfortunately, Mr. Goodling's letter to the editor putting the other side in the public record was not printed by the Washington Post, so I would like to ask unanimous consent that this letter be included in the letter.

Mr. EDWARDS. Without objection, it is so ordered.

[The letter follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 29, 1982.

Mr. HOWARD SIMONS,
Managing Editor, the Washington Post, Washington, D.C.

DEAR MR. SIMONS: In the Tuesday, July 27th issue of the Washington Post, Charles R. Babcock's article "Cuts in Block Grant Complicate Funding Alternative to Busing" contains assumptions about Federal funding of education programs which I feel are highly questionable. The thrust of the article is that certain large cities which received grants under the "Emergency School Aid Act" (ESAA) for desegregation programs are receiving far less funds under Chapter 2 of the "Education Consolidation and Improvement Act" (ECIA) which consolidated 28 or so categorical grant programs, including desegregation aid, into a single "block grant." The funds now can be used for any of the purposes permitted by the consolidated programs.

The questionable assumption inherent in the complaint of these city school systems, and in Mr. Babcock's article, is that funding for Emergency School Aid would have continued at the 1981 level if it had remained a separate program. The funding history of that program strongly suggests otherwise. The fiscal 1979 appropriation for ESAA was $300.5 million; fiscal 1980 dropped to $248.6 million; and in fiscal 1981 funds were slashed to $149.2 million.

There is a very strong possibility that had ESAA remained a separate program there would have been no funds appropriated for it for succeeding years. As things stand under Chapter 2 of ECIA, funds are available, to the extent school districts choose to use them, for the purposes authorized by ESAA. Moreover, all school districts having desegregation problems can fund such programs, rather than just the fortunate ones which received funds under ESAA.

There are two possible ways of assisting those districts which had the temporary benefit of large ESAA grants. One would be to increase funding for Chapter 1 (dis-

advantaged children) programs up to the full $3.48 billion permitted under the 1981 Reconciliation Act, since ESAA programs often were similar to those funded under Chapter 1, and Chapter 1 funds are heavily concentrated in large cities. The other is to increase funding for Chapter 2 up to the ceiling of $589.368 million for fiscal 1983 and 1984. Together these additions would provide about $700 million additional funding, all of it distributed in formulas weighted to favor cities and rural areas having concentrations of disadvantaged children.

It simply is not accurate to blame any shortfall of such funds on program consolidation.

Sincerely,

BILL GOODLING,
Member of Congress.

Mr. SENSENBRENNER. I rest my case, that block grant funding, or funding cuts of ESAA, started in 1979 rather than starting in 1981.

I yield back the balance of my time.

Mr. EDWARDS. The gentleman from California, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman.

My question is a general question. As I understand it, these funds—when the program were originally initiated, were—as the title suggests—emergency school aid funds. I guess my question to you is how long should those funds continue when they were begun precisely for emergency circumstances, at least as evidenced by the title and the legislative history?

Ms. BROWN. I think you have put your finger on a question that has been debated about the Emergency School Aid Act for a number of years. There were changes made in the last year of the Carter administration in response to new legislation in 1978, and it dealt with that precise problem: How long the emergency lasts.

There is no question that implementing a school desegregation plan successfully is a several-year process. The initial changes are dramatic and it takes time for students and teachers in a community to become comfortable with them. To make a school desegregation plan work and become a daily part of the operation of the school system takes a number of years.

There is also, I think, no question that the degree of need differs by when the school desegregation plan goes into effect. We saw in the late seventies that a number of major cities, large cities, were ordered to desegregate and were implementing school desegregation plans.

The Department of Education made a change in the ranking system, the way of granting priorities, in the later years of the seventies. Emphasis was put on the recentness of the desegregation plan and implementation of it.

I think, as you will hear from the people who are following me, having significant assistance available to help in implementing a desegregation plan was just absolutely essential.

Mr. LUNGREN. Let me ask you this: Why ought not that burden be borne by those jurisdictions who presumably were not following the spirit and the letter of the law, and the most important law of the country, the Constitution?

I happen to be one of those who does not support busing, but supports other concepts to try to bring about those goals that we have in common.

Yet, in one of the arguments, I think, it is in essence, busing oftentimes places a burden on students and on parents, without achieving some reasonable end.

At the same time, I don't think we ought to reduce the burden on the communities in toto which are responsible for this, and one of the ways you can do that, as I understand it, is require them to come up with the pocketbook, the funding.

Why shouldn't we go after those communities who presumably were not following the Constitution and not preserving the rights of minorities, and require them to bite the bullet and pay for remedial action necessary to make up for their shortcomings?

Ms. BROWN. I think you have a legitimate position, but the reality of the funding of education in this country is that support is oftentimes not voted for the kinds of programs needed to successfully implement a school desegregation program.

I think it is safe to say that many of the big cities who have been found in violation of the 14th amendment and title VI, in this area, are also cities under severe financial strain.

Mr. LUNGREN. I understand that. None of them have a deficit of $1 trillion and you have the Carter administration in which you served, and I presume you believe was dedicated to the protection of civil rights, slashing in half the funds for the program. Is that an indication on the Federal level there will be funds available that local jurisdictions and States ought to look to?

Or is that an indication that if that administration would slash it in half, the prospects for maintaining or increasing those funds—as I assume you would argue is necessary—is not probably going to come from the Federal level and therefore, we ought to face reality and say to the local schools and their States:

"Here is the total amount of money the Federal Government is going to give." You have to have the guts to come up with the funding that is appropriate.

Ms. BROWN. I think there is a difference between reduction and elimination of Federal assistance in this area. By folding this grant program into the block grant legislation, for which there are many valuable purposes served—though not in this particular instance—the discretion for allocating money to aid in the desegregation process has been left up to the States.

I personally feel it would be very desirable for each State to decide to allocate some of that money to aid in the desegregation process, but it is not happening. It is not happening to the extent that money was available for this specific program at the Federal level, even under the reduced Carter administration level, and I think that is the significant point.

You now have a need, a need that is being required under the 14th amendment, to correct a judicially determined pattern of discriminatory practice. That need is now going unmet and it was being met before by a Federal program to assist local school systems.

Mr. LUNGREN. If the pattern of funding as existed in the last 2 years of the Carter administration was slashed in half indicated the direction in which the Federal Government was going, wouldn't it make more sense to have that folded into the overall block grant approach with somewhat of a mandate from the Congress that the needs of minority students and disadvantaged students must be met in terms of the overall match?

Ms. BROWN. I think that would be an improvement over the bill the way it reads at the moment.

Of course, I also would argue, as I did in my testimony, that there were other valuable parts of the Emergency School Aid Act, including the civil rights provisions and clearances that had to be met before the money was awarded.

I think the important thing is to have money available to aid in these kinds of programs.

There may be another mechanism for doing this in the act you are talking about, but right now, you have nothing. Yet, you have school districts undergoing—implementing school desegregation plans. They are faced with the needs they were faced with 2 years ago, or that any school district has faced implementing a plan either today or in the past.

Mr. EDWARDS. The subcommittee must recess for 10 minutes, pending a vote.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Ms. Brown, the heart of the matter is regardless of how much money is sent out, whether in block grants or in a categorical fashion, there simply must be rules and regulations with regard to how the money is being spent, is that not correct?

Ms. BROWN. Yes, I think it is. In the early years that the predecessor of the Emergency School Aid Act operated—it was called the emergency school assistance program, and it operated in 1970 and 1971—you didn't have those kind of strong civil rights provisions. Reports by civil rights groups illustrated that some of this money was going to continue discriminatory practices rather than eliminate them. That is why the civil rights provisions were then inserted into the Emergency School Aid Act legislation itself.

It is very important that the money which is available to assist in desegregation be used, in fact to do that—to eliminate discriminatory practices and fund programs that are beneficial to enhancing the desegregation process.

Mr. EDWARDS. Is it not also your testimony that it is good practice that you don't get the money, the school district doesn't get the money unless it has a good record or has reversed the inappropriate procedures?

Ms. BROWN. Absolutely. School districts used to apply annually for ESAA funds. The 1978 amendments reauthorizing, ESAA substituted multiyear grants, but the school districts had to meet the civil rights tests annually, and that meant the Office for Civil Rights visited major school districts each year. The Office was, in effect, able to monitor agreements to correct problems that were entered into in previous years. So it serves not only as a way of hastening the development of, let's say, a bilingual education plan or a plan to ensure nondiscriminatory assignment to special education classes.

ESAA allowed the Federal Government to help the school districts, to advise them as they were implementing their programs, and to monitor them to make sure they were remaining in compliance with civil rights laws.

Mr. EDWARDS. Thank you very much.

Are there further questions?

Ms. DAVIS. Ms. Brown, can you describe for the committee what kind of data the districts were required to collect in order to comply?

Ms. BROWN. Yes. For the last 14 or 15 years, the Office for Civil Rights has been collecting, first annually and now on a biannual basis, information on the enrollment of children by race, national origin, sex and disability, at the school district level and at the individual school level.

These forms ask a variety of questions, and have been a very useful civil rights compliance tool. They were used in reviewing the civil rights posture of ESAA applicants and then in the off years, in the year that the survey was not conducted, a special form was sent just to ESAA applicants which looked just at the questions of enrollment patterns in schools and classes on the basis of race of national origin. So every year forms were reviewed.

If the forms looked good, oftentimes the school district then was not visited. There is a lot that could be determined just on the basis of looking at the forms.

Ms. DAVIS. And the jurisdiction was notified of these data requirements in the regulations, is that correct?

Ms. BROWN. They were notified in the regulations. They also were notified, particularly in the last few years, well in advance of the sending out of the forms. The school districts were notified 6 or 7 months in advance.

The forms were sent out maybe 3 months in advance of the school year and they were sent in on October 15, or after October 15 of each year.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Shaw.

Mr. SHAW. Perhaps I have a comment more than a question. I have followed the testimony and answers with a great deal of interest.

It concerns me when a witness says, "Well, if we leave it to the States, it won't get done." We have, of course, six States already that have imposed this into their own formula.

I think what we need to do here is to encourage the States, but don't mandate the States. One thing we do know is that busing is perhaps the most undesired remedy to the problem of undoing segregation, which has become entrenched in some areas, but I think that by mandating busing or putting that within the formula and thus for all practical purposes mandating it, what you are doing is putting the States in a straitjacket where they can't use new and innovative ways to come up with solutions that will be more desirable to the people we are trying to serve, who are the schoolchildren.

I would invite you to comment on that. It is not a question, but I would certainly appreciate any comment you might have.

Ms. BROWN. First of all, I am sorry if I made a blanket criticism of States. I didn't intend that.

Mr. SHAW. It may have been my misinterpretation.

Ms. BROWN. I think a number of States have shown very forceful and sensible leadership in this area. It is a tough time, economically, for individuals and for units of government in terms of supporting any number of social programs, including education, and that combined with oftentimes a public resistance to the funding of programs that go along with school desegregation make it, I am afraid, unlikely in the majority of States that the funding will be available for these kinds of needs.

The other thing about the Emergency School Aid Act is that while it did have the civil rights provisions which I have talked about this morning, it really was quite flexible in the kinds of programs that it funded.

There was no set list of programs that could be funded. There just had to be programs that would assist the desegregation process and that had been demonstrated as effective kinds of programs. It was up to school systems to demonstrate that these kinds of programs had worked in other places or had been developed in a way which provided an indication at the local level that it would be an effective program—for example, perhaps some evaluation results from using it in one school before expanding it to others.

ESAA really was targeted on helping school districts desegregate, but it left to those people who were most familiar with the local school programs; that is, the superintendents and other administrators, to develop the program and come forth with specific steps to aid in this process.

Mr. EDWARDS. Thank you very much, Ms. Brown.

Our next witnesses will constitute a panel. Mr. Samuel Husk, executive director, Council of Great City Schools; Mr. Lee McMurrin, superintendent of the Milwaukee Public Schools; and Mr. Eugene Reville, superintendent of the Buffalo Public Schools.

Mr. Husk, I believe you are first. Without objection, all of the statements will be made a part of the record, and you may proceed. We welcome all of you.

TESTIMONY OF SAMUEL HUSK, EXECUTIVE DIRECTOR, COUNCIL OF GREAT CITY SCHOOLS; LEE McMURRIN, SUPERINTENDENT, MILWAUKEE PUBLIC SCHOOLS; AND EUGENE REVILLE, SUPERINTENDENT, BUFFALO PUBLIC SCHOOLS

Mr. HUSK. To briefly give some background to the committee members, the Council of Great City Schools is an organization comprised of 30 of the largest urban city school systems in the United States.

I should point out that of those 30 school systems, 27 of those school systems are currently engaged in desegregation activities, activities to reduce the isolation of minority students.

So, the issue we have before us this morning is of importance to those particular school districts. In particular, it is important to those school districts which are undertaking efforts to desegregate their school systems and at the same time to improve the quality of education in those urban school systems.

It is ironic that the programs that we are talking about today, and the two panelists with me will be alluding to this in more detail, are programs which model the type of activity that this administration would seem to support, those being a combination of specialty schools, magnet schools, and in our cities are most often backed up by either a mandatory plan to support those voluntary efforts if they don't work, or if not in the case of a court mandate, a decision by the Board of Education that it wants to move forward in this very important area.

I think one of the things most upsetting to us as we look at what happened to chapter 2 funds is that we see an interruption in na-

tional leadership in the area of school desegregation. Quite ironically, if you look at the date of passage of the Emergency School Aid Act, it was in the administration of President Nixon.

And I must point out that during the Nixon administration, and during the Ford administration, and carried on into the Carter administration, there was a strong implementation of the civil rights aspects of this legislation, and strong attention given to this type legislation.

Now, as we view the situation in the current administration, we find there is a break in that policy, a policy which began in 1965 with the passage of the Civil Rights Act and continuing to this day.

Because it is not only the Emergency School Aid Act which is facing oblivion through the block grant process, but also title IV-A of the Civil Rights Act.

As I understand the administration's request this year for title IV-A [CRA] to help school districts plan for desegregation, zero funds.

To me, that signals, in combination with chapter 2, the type of thing that we are saying, and the policy that is being followed or the lack of policy which is being followed.

I was very encouraged by Congressman Shaw's comment, because I think it is that kind of leadership that needs to be coming out of the Department of Education, that needs to be coming out of the White House.

Some affirmative, positive statements saying that although this is a local responsibility, we still at the Federal level, at the national level, have the concern and want to stimulate the kinds of things you at the State and local level want to do or have to do.

And I think we don't see that.

It is further upsetting to see that that opportunity was there under chapter 2, because if we look at the legislative history of chapter 2, we find in the Senate version of the Education Consolidation and Improvement Act specific language which says that school districts which are desegregating ought to be given special attention under this Consolidation and Improvement Act.

They ought to be looked at, they ought to be helped; they ought to be assisted by this program. And yet, in the regulations that were issued by the administration, there is no reference, no emphasis being put on that particular language.

I think it is that lack of positive leadership, that lack of commitment that is most upsetting, in addition to the dollar losses.

Now, I would like to point out as an observer of the Federal budget process that if Mr. Sensenbrenner, Mr. Shaw, and Mr. Lungren, were to look at the appropriations for emergency school aid, they would see that there were various programs supported under that legislation.

The first program was a basic grant program. The basic grant program was intended, as far as I can understand, in 1972, to help those school districts within any State who were going to desegregate, regardless of the emergency that they were undergoing.

So, for example, you would find that a school district which had desegregated in 1965 would receive funds for programs under that basic grant program.

There were other provisions, however, also with emergency

school aid, under the special projects section and later on a new provision added to the legislation in magnet schools.

What happened in the reduction of funds was a reduction in some areas but not in others. I think the reductions in the basic grants were a recognition by the Congress that for some school districts the emergency was over, and there was no need to push more money into an experimental reading program, for example, which began in 1965, there was no reason to push money in there in 1975.

That is a very wise policy decision. What was done instead was to shift funds from the basic program over to the special programs and the magnet school programs. If you see the funding trend of those programs, they actually increase while the basic program diminishes.

Another shift that happened in 1978 was under the basic program while it was still in existence. There was an allocation set aside for the States to use which was, again I think, a recognition by this level of government that we needed to give more responsibility to the States to work with localities to carry out the desegregation program.

I think those trends have to be looked at. I think, also, one has to look at the predecessor programs, the Consolidation and Improvement Act, to see funding trends. In fact, what the Congress did to the innovation support program, under previous legislation, was to reduce the malfunding in that program from $147 million, I believe, down to $50 million.

So, if one would use the logic that reduction in funds means less of a commitment, then we have to be careful about which part of the program we are referring to.

In my own testimony, I would like to have you look at some of the dollar impacts of this legislation. Not so much from the point of view that dollars are an end-all of the Federal program, but they do indicate a level of program activity in the school district and without those funds, it is going to mean substantial reductions in services at those levels.

If we look at page 6, of our testimony, which is table 1, we see what happened with emergency school aid grants from 1980–81, to 1981–82, and we see that the amount of money going through the cities listed there declined from $70 to $47.6 million.

We are unhappy to report to you that our total amount under the 28 different categorical programs supported by the Education Consolidation and Improvement Act is $39 million. We are being asked in an urban school district which is desegregating to take $39 million, where we were getting $47.6 million and to allocate those funds over those 28 special categorical needs.

Naturally, school districts like ours that need desegregation, Milwaukee, Buffalo, St. Louis, Seattle, are not going to do that. Most of their funds will be concentrated on the desegregation program.

I would say roughly 75 to 80 percent of the funds coming will be spent for that purpose.

What it does, on the other hand, is say to the city school districts: You spend your moneys on that particular category while the rest of the school districts in the State can create teachers centers, can have programs for gifted and talented, can have all of the other things which are associated with the other aspects of quality education at the local level.

And when we look at another aspect of this program, we look at an equity aspect of it, which we see on table 2, pages 7 and 8. You will notice there an interesting shift of funds.

The legislation says the moneys will be distributed to States based upon student enrollment and then within the State, it will be distributed on student enrollment, weighted by high-need children, concentrations of high-need children; the fiscal needs of the school districts, and their urban and rural characteristics.

Yet, when we look at the distribution of moneys, let's say, for example, in Wisconsin, on page 8, we see that the State had, from preceding programs that were consolidated, lost in revenue approximately $5 million.

If we look at Milwaukee's allocation, we see that Milwaukee paid for the rest of the State's loss, so that school districts outside of Milwaukee suffered no reduction in categorical funding in that sense, whereas Milwaukee was paying for that reduction.

Sometimes, as you know, in the courts when they look at school finance legislation they judge it by its results and not by the words that are in the legislation, and I should point out that Wisconsin has one of the better statements of how funds ought to be allocated using their particular formula.

But the impact is that Milwaukee still is ending up paying for the balance of the State to maintain programs at the same level.

I would like to conclude, because I know that the Congressmen would much rather focus in on the kinds of problems and issues that are emerging at the local level with regard to the Consolidation and Improvement Act.

At this time, I will answer questions or whatever you want to do.

[The statement of Mr. Husk follows:]

Prepared Statement of Samuel Husk, Executive Director, the Council of the Great City Schools

The Council of the Great City Schools is pleased to take this opportunity to testify before this Subcommittee on the education block grant and urban school desegregation.

Currently in its 25th year, the Council is an organization of the nation's largest urban school systems. On its Board sit the Superintendent and one Board of Education member from each of our 30 districts, making the Council the only national organization so constituted and the only education coalition whose membership is solely urban.

The Council's membership serves slightly over 4 million youngsters, or about 11% of the nation's public school enrollment. Our 30 districts serve approximately 32% of the nation's Black children, 26% of the Hispanic children, and 21% of the Asian. Almost one-third of our enrollments are of children who reside in families receiving public assistance, and over 70% of the average enrollment is Minority.

In this testimony, I would like to share with you our preliminary analysis of how the passage of the Education Consolidation and Improvement Act (PL 97-35) last summer has effected the pattern of federal desegregation aid to large city school systems. My colleagues from Milwaukee and Buffalo will describe for you how these changes have affected local efforts to desegregate the schools in their respective cities.

At the request of the present Administration, the Congress approved last summer as part of the Omnibus Budget Reconciliation Act new legislation that has dramatically changed the pattern of federal aid for school desegregation: the Education Consolidation Improvement Act (ECIA). Chapter 2 of this legislation consolidated approximately thirty special purpose categorical programs into a single block grant to the states. Included in the many programs that were condolidated was the federal Emergency School Aid Act (ESAA) program which was the Department of Education's chief financial mechanism for spurring local school integration.

The Emergency School Aid Act was enacted in 1972 to provide financial assistance: 1) "to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools; 2) to encourage the voluntary elimination, reduction or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students; and 3) to aid school children in overcoming the educational disadvantages of minority group isolation."

The total appropriation for ESAA, which had eight separate parts, began at $228m annually in FY73 and reached its peak of about $300m in FY78 and FY79. Since FY80, the appropriation has dropped from about $250m to $150m in FY82. The school year beginning this month marks the elimination of the program as it is now consol.dated with several others.

National evaluations of the old ESAA program published by the Department of Education indicate that it was successful in increasing the achievement scores of disadvantaged elementary school students. In the 1980-81 school year, the twenty cities (shown in Table 1) received about ~~$110m~~ $70.3m from ESAA to operate magnet

schools, to pair schools, to run in-service personnel training for desegregation and basic skills instruction for students. Local evaluations showed not only increased achievement but improvement in racial attitudes and behaviors.

One of the major difficulties with the old ESAA was that it spread funds widely across school districts. Approximately 330 school districts received aid in 1981. The result according to the General Accounting Office (GAO) was that the Congressional intent to desegregate was often diluted by lack of funds in any given locale.

The Emergency School Aid Act was set up, however, in such a way that assured that funds would be spent only in districts that were showing substantial progress in desegregation. Preclearance procedures that were established by OCR were formed to guarantee that schools were not rewarded for continued segregation. These clearance procedures operated under ESAA have now been eliminated with the Block Grants. The Superintendents from Buffalo and Milwaukee will describe for you how those civil rights assurances are being effected in absence of a clear federal mandate.

With the new block grant, federal funding for desegregation is on a much diminished basis. The appropriation for the Block Grant is now set at $483m, in comparison to the $538m appropriation for the antecedent programs. Funds are distributed to states on a per child basis rather than on a needs criterion. States are then asked by ECIA to develop their own formulas for distributing block grant funds to local education agencies (LEAs). State-designed formulas by law are to distribute funds on an equitable basis, with corrections to the formulas to take into account areas with high concentrations of high-cost students. The statute explicitly states in Section 565 that funds will be distributed within state:

a) ...according to the relative enrollments in public and nonpublic schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as

1) children from low-income families,

2) children living in economically depressed urban and rural areas, and

3) children living in sparsely populated areas.

b) The Secretary shall approve criteria suggested by the State educational agency for adjusting allocations under Subsection (a) if such criteria are reasonably calculated to produce an equitable distribution of funds with reference to the factors set forth in subsection (a). (emphasis added)

Use of the funds received by the LEA can be for any of the purposes cited in the antecedent programs, at the discretion of each LEA. Dr's. Mcmurrin and Reville will describe how that discretion is being used in their cities.

Mr. Chairman, it is clear from the legislation that each State formula must include a measure of the number or percentage of high-cost children in the school district. Congressional intent to have states develop formulas that would favor districts with higher concentrations of high-cost students is further emphasized by the listing of suggested factors a formula could contain in order to carry out the statute's intent.

After a preview of the Department of Education's approval of the first twenty state applications, the Council and the Lawyers Committee for Civil Rights wrote to Secretary Bell protesting the state formulas that he had considered and signed. (See attached). To this date we have not heard a response.

Our analysis of the state formulas indicate that the old special purpose funds in the cities are being used now to sponsor general purpose projects throughout the states. For instance, in Minnesota, the new block grant will yield the state 15.4% more in 1982-83 than it had in 1981-82 from the special purpose grants. Minneapolis, however, will see its grant money--43% of which were ESAA funds--decrease by 55.3%. The balance of the state will be increased by an average 23% (see table 2). This pattern of funding is repeated in state after state.

The Council has now reviewed all state applications and have found from their content that the Secretary of Education could not have had enough information to have made a reasonable decision on whether the formulas meet the intent of the law.

In 1980-81, the twenty listed cities received about $110m in programs eventually put into the block grant, 64% of that was from ESAA. This new school year, these same districts will receive about $38m to fund desegregation and all other efforts in the block grant. This amount is 20% below what the districts had in ESAA alone last year.

Under these difficult financial conditions and the questionable commitment from the federal government, it will not be easy for city schools to continue desegregating. The leadership of these cities and their schools is concerned that their own willingness to shoulder the responsibility will be undercut by divergent local, state and national interests. We would strongly urge the Congress to take the lead in this area which is vital to the preservation of our democratic ideals and re-assert itself in terms of national resources. No other effort could be so important.

Table 1: PRELIMINARY ESTIMATES OF EMERGENCY SCHOOL AID TO SELECTED CITIES

City	Grants ESAA (1980-81)	Grants ESAA (1981-82)
Atlanta	$ 416,039	$ 200,000
Baltimore	0	0
Boston	3,018,537	461,738
Buffalo	5,546,584	6,850,466
Chicago	0	1,800,000
Cleveland	7,085,000	3,798,615
Dade County	926,592	593,580
Dallas	3,168,613	1,770,012
Denver	1,640,884	607,619
Detroit	6,009,479	3,179,193
Memphis	253,000	389,511
Milwaukee	7,582,922	6,866,250
Minneapolis	680,275	261,612
Nashville	789,327	572,027
New Orleans	589,190	404,255
New York	10,977,039	6,110,170
Philadelphia	5,226,885	3,607,876
Portland	336,766	255,290
St. Louis	7,290,933	4,666,632
Seattle	6,500,010	3,915,705
Toledo	890,932	740,758
Washington	1,397,621	500,000
TOTALS	$70,300,000	$47,600,000

Table 2:

PRELIMINARY ESTIMATES
GAINS AND LOSSES UNDER BLOCK GRANTS FOR
SELECTED STATES AND CITIES

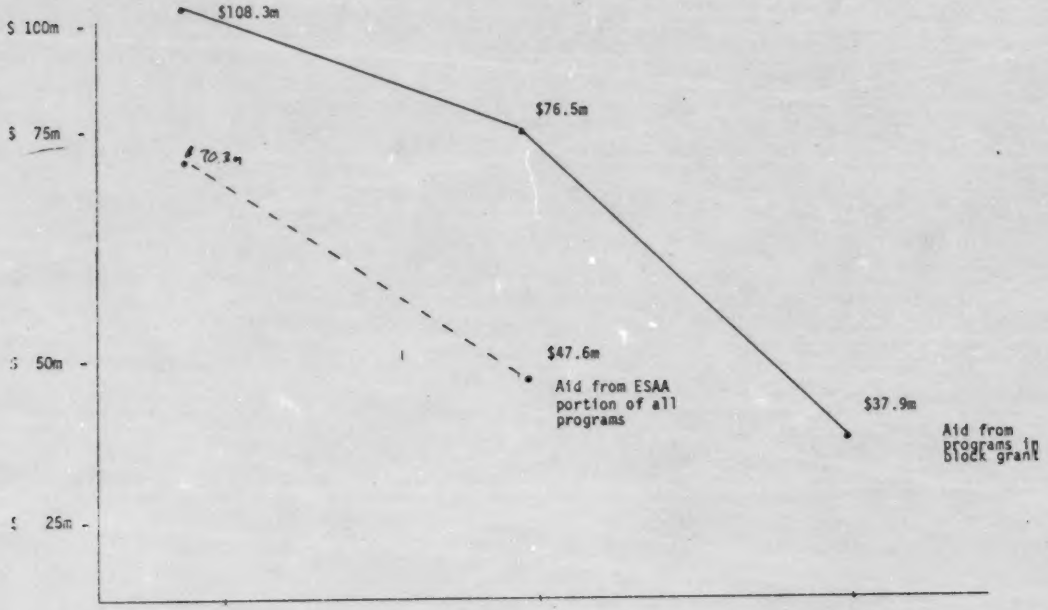
State/City	1981-82 Categoricals	1982-83 Block Grant†	% Change	
COLORADO	$ 5,470,881	$ 5,226,034	- 4.4%	
Denver	784,158	717,846		- 8.5%
Balance of State	4,686,723	4,508,188	- 3.8%	
DISTRICT OF COLUMBIA	$ 5,081,817	$ 2,187,360		-56.9%
FLORIDA	$ 15,189,568	$ 15,789,102	+ 3.9%	
Miami	2,624,958	2,160,694		-17.7%
Balance of State	12,564,610	13,628,408	+ 8.5%	
GEORGIA	$ 12,412,579	$ 10,871,064	-12.4%	
Atlanta	1,300,000	786,000		-39.5%
Balance of State	11,112,579	10,085,064	- 9.3%	
ILLINOIS	$ 22,001,556	$ 21,174,245	- 3.7%	
Chicago	6,833,669	4,750,000		-30.5%
Balance of State	1[illegible],167,887	16,424,245	+ 8.3%	
LOUISIANA	$ 11,553,890	$ 8,550,185	-25.9%	
New Orleans	1,903,758	658,400		-65.4%
Balance of State	9,650,132	7,891,785	-18.2%	
MARYLAND	$ 7,231,962	$ 7,901,277	+ 9.2%	
Baltimore	895,598	1,350,000		+50.7%
Balance of State	6,336,364	6,551,277	+ 3.4%	
MASSACHUSETTS	$ 10,653,970	$ 10,179,203	- 4.4%	
Boston	1,056,479	800,000		-24.3%
Balance of State	9,597,491	9,379,203	- 2.3%	
MICHIGAN	$ 20,542,592	$ 18,242,264	-11.2%	
Detroit	4,249,476	3,400,000		-20.0%
Balance of State	16,293,116	14,842,264	- 8.9%	
MINNESOTA	$ 6,610,381	$ 7,634,133	+15.4%	
Minneapolis	610,712	272,996		-55.3%
Balance of State	5,999,669	7,361,137	+22.7%	
MISSOURI	$ 17,567,404	$ 8,900,251	-49.3%	
St. Louis	5,131,487	708,000		-86.2%
Balance of State	12,435,917	8,192,251	-34.1%	

State/City	1981-82 Categoricals	1982-83 Block Grant+	% Change	
NEW YORK	$ 48,291,827	$ 31,353,236	-35.0%	
Buffalo	7,651,652	950,000		-87.6%
New York City	14,238,100	8,470,000		-40.5%
Balance of State	26,402,075	21,933,236	-16.9%	
OHIO	$ 25,208,194	$ 20,366,440	-19.2%	
Cleveland	4,647,259	900,000		-80.6%
Toledo	814,496	371,000		-54.5%
Balance of State	19,746,439	19,095,440	- 3.3%	
OREGON	$ 4,296,691	$ 4,634,193	+ 7.8%	
Portland	645,500	500,000		-22.5%
Balance of State	3,651,191	4,134,193	+13.2%	
PENNSYLVANIA	$ 20,340,163	$ 20,977,320	+ 3.1%	
Philadelphia	6,573,959	3,427,651		-47.9%
Balance of State	13,766,204	17,549,669	+27.5%	
TENNESSEE	$ 7,862,551	$ 8,583,914	+ 9.2	
Memphis	997,737	948,066		- 5.0%
Nashville	795,675	556,823		-30.0%
Balance of State	6,069,139	7,688,367	- 1.5%	
TEXAS	$ 27,272,790	$ 27,688,367	+ 1.5%	
Dallas	2,663,471	1,001,260		-62.4%
Balance of State	24,609,319	26,687,107	+ 8.4%	
WASHINGTON	$ 9,658,260	$ 7,352,566	-23.8%	
Seattle	4,230,337	731,530		-82.7%
Balance of State	5,427,923	6,621,036	+22.0%	
WISCONSIN	$ 13,788,358	$ 8,923,105	-35.2%	
Milwaukee	7,824,647	2,695,606*		-65.6%
Balance of State	5,963,711	6,227,499	+ 4.4%	

* Includes funds from State portion of Chapter 2.

+ Block grant amount in each city represents funds for public schools only, and should be considered as estimates. Data on 1981-82 State categorical obtained from Education Commission of the States.

Table 3: ESTIMATES OF FUNDING TO SELECTED DISTRICTS FROM PROGRAMS CONSOLIDATED INTO BLOCK GRANT WITH DRPARATE ESAA ESTIMATES



	1980-81	1981-82	1982-83
National funding	$770.0m	$537.9m	$483.9m
City share	14.2%	14.2%	7.8%

THE COUNCIL OF THE GREAT CITY SCHOOLS
1707 H Street, N.W., Washington, D.C. 20006 / (202) 298-8707

July 2, 1982

Atlanta
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Long Beach
Los Angeles
Memphis
Milwaukee
Minneapolis
Nashville
New Orleans
New York City
Norfolk
Oakland
Philadelphia
Pittsburgh
Portland
St. Louis
San Francisco
Seattle
Toledo
Washington, D.C.

The Honorable Terrel Bell
Secretary of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Secretary:

The Council of Great City Schools, a coalition of the nation's largest urban school systems, and the Federal Education Project of the Lawyers' Committee for Civil Rights Under Law are writing to express concern over Departmental approval of state formulas for distributing Chapter 2 ECIA funds that we do not believe meet the intent of the Chapter 2 statute.

Under the Chapter 2 allocation scheme, State Educational Agencies are charged with the responsibility of devising in consultation with the advisory committee, a formula for distributing at least 80 percent of the state's Chapter 2 funds to the local educational agencies. The statute states in part in Section 565 that these funds shall be distributed:

> (a) ...according to the relative enrollments in public and nonpublic schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as --
>
> (1) children from low-income families,
>
> (2) children living in economically depressed urban and rural areas, and
>
> (3) children living in sparsely populated areas.
>
> (b) The Secretary shall approve criteria suggested by the State educational agency for adjusting allocations under Subsection (a)

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> if such criteria are reasonably calculated to produce an equitable distribution of funds with reference to the factors set forth in subsection (a).
> (emphasis added)

Clearly, one of the central factors in subsection (a) to be included in each state formula is a measure of the number or percentage of high-cost children in the school district. Congressional intent to have states develop formulas that would favor districts with higher concentrations of high-cost students is further emphasized by the listing of suggested factors a formula could contain in order to carry out the statute's intent.

The legislative history further supports our view that Congress expected funds to flow where need was greatest. Among the factors that Congress additionally pointed to for use in adjusting the basic state formula is past desegregation funding. The Senate Committee Report (97-139) accompanying the Omnibus Reconciliation Act of 1981 (P.L. 95-35) states on page 896:

> Since funds previously earmarked by school desegregation assistance have been consolidated into this subpart, the Committee expects that recognition of additional costs incurred by efforts to alleviate the isolation of minority group children where appropriate will be included among the needs factors considered in the allocation of funds to local educational agencies.

This language is particularly edifying because it was the Senate version of this part of the legislation that prevailed in Conference with the House. Therefore, the intent of the Senate should be looked to by the Department for guidance in developing regulations and in approving state formulas.

Based upon our review of information received from the states describing their formulas, it appears that a number of state formulas have been approved by the Department even though they do not adequately incorporate the criteria described in Section 565 of the statute relating to high-cost students. While all data are not available, it is clear that the formulas approved so far will result in decreasing, by millions of dollars, federal education program funds to inner-city schools and spreading similar amounts of funds across all of the states' LEAs. These were funds that in many cases were made available in the past by the federal government to aid in the school desegregation process, as well as for other special purposes. The school systems in Buffalo, St. Louis, and Milwaukee provide good illustrations of what is occurring. St. Louis City Public Schools, for instance, would drop from $5.2m in categorical monies to about $710,000 in block grant funds.

While we do not dispute the argument that Chapter 2 was intended to increase state discretion in administering the consolidated federal programs, we do not believe Congress intended the result we are beginning to witness. The requirement of Secretarial approval of the formulas; explicit language in the statute mandating formulas that provide more funds to districts having the greatest concentrations of high-cost students; examples in the legislation of relevant formula factors to accomplish this purpose; and the legislative history all point

to great Congressional concern that funds be directed on a need basis. Many of the formulas approved simply make no "reasonably calculated" effort to achieve the statutory intent of Section 565. So far as we are aware, most States have not even been required to analyze the results of the formulas they propose, and to present the results of such an analysis to the Department. This is particularly critical in the case of States which have chosen to establish separate funding pools of Chapter 2 money: distributing one pool on a per-pupil or ADA basis alone and another pool on the basis of some high-cost measure. In such a case, if the overwhelming share of the State's Chapter 2 funds are placed in the "per-pupil" or ADA" pool, it would be difficult to conclude fairly that the formula had been meaningfully "adjusted ... to provide higher per pupil allocations (for high-cost children)."

In addition to the concerns raised above, we have serious questions about the process used in approving the formulas. The Department's approval of nearly 20 state formulas prior to the issuance of final regulations of Chapter 2 runs contrary to the purpose of providing public notice of proposed rulemaking and seeking public comment. Approval of these formulas suggests that the Department is not serious about considering the comments made by groups and individuals in response to the February 12, 1982 NPRM.

Because of our concern over both the procedural issues and the impact of formulas we believe to fall short of the legislation's intent we request the following:

1. A moratorium on the review of additional state formulas until final Chapter 2 regulations are issued;

2. Revocation of approval of formulas already submitted until such time that the Department can formulate specific guidelines for distributing Chapter 2 funds within states;

3. Publication of the specific guidelines for state formulas in the Federal Register for public comment; and

4. Publication of submitted state formulas in the Federal Register for public comment.

In addition, we request the opportunity to meet with you to discuss the concerns we have raised and our recommendations listed above. Such a meeting would be beneficial and might avoid future misunderstandings or the possible necessity of litigation.

We look forward to your reply.

Sincerely,

Samuel B. Husk
Executive Director
Council of Great City Schools

Linda Brown
Director of Federal Education Project
Lawyers' Committee For Civil Rights Under Law

Michael Casserly
Legislative & Research Associate
Council of Great City Schools

Norman Chachkin
Deputy Director
Lawyers' Committee For Civil Rights Under Law

Mr. EDWARDS. We will go ahead with the other two witnesses, and then ask questions of the panel.

Our next witness is Dr. Lee McMurrin, superintendent of the Milwaukee Public Schools.

Mr. MCMURRIN. Good morning, Mr. Chairman and members of the subcommittee. I am delighted to be here this morning to tell you the Milwaukee story. You have heard some things about Milwaukee and Wisconsin already, and I would like to add to that story.

I want to put in the record this morning that, yes, Mr. Sensenbrenner did spearhead some legislation in Wisconsin along with other legislators which has assisted Milwaukee a great deal, and the suburbs, in forwarding the integration of our schools.

That law is a model law. We started school last week. We are now sending over 1,000 minority students into 13 suburbs that have contracts with us, and those would include Whitefish Bay and Shorewood, the northern suburbs which Mr. Sensenbrenner has some representation in.

We have 200 students from the suburbs coming into the city, and that number has grown each year, to take part in the fine magnet schools, or, as we call them, specialty school programs in Milwaukee, they often come into Milwaukee to take part in programs which they couldn't possibly have, within the suburbs.

So, it has been good legislation. I think it fits the philosophy of our board of school directors, the philosophy of our State as expressed in that law and hopefully the philosophy of our Federal Government, in encouraging voluntary selection of schools.

Also I must say quickly that it not only provides for that suburban-city link, but also provides funds for Milwaukee for its internal integration.

Back in 1976, when our order came down from the Federal court to plan an integration program, our school system went on record that we would do it with educational incentives. At that time, we had 9 percent of our student body, which was about 114,000 pupils, 9 percent of them were in what you could call a racially balanced school or an integrated school.

We had a problem that had to be solved. Our board went on record with a statement on education and human rights, committing them and our school system to the integration of the schools.

Also in that statement, it said that we would go after every single governmental agency and all groups within our city, State, and the Federal Government to commit themselves to the integration of society and the integration of schools.

So, we are on record in Milwaukee as being for integration as well as being committed to the court orders that said we must plan, and our board took the educational approach in that planning.

You might ask this morning, how are we doing now that we are in 1982, the beginning of the school year? We will have the requirement under the court order to express on the first day in October that 75 percent of our students are in racially balanced schools throughout our city.

We will achieve that racial balance as we did last year by voluntary means, providing incentives for minority children to choose

into schools of their choice and for majority children to choose into schools of their choice.

A number of specialty schools are in the central portion of our city, rather than in convenient suburbs and are available to all of our city children.

When the record goes in this fall, it will be very close to what it was last fall. We will have 85 percent—not the 75 percent required by the court—of our students in integrated classrooms and in integrated schools throughout our city.

How were we able to do this? Well, I have mentioned State assistance that come to us. We get about 20 percent more State aid for each student that enhances racial balance. If a minority youngster and the parent chooses to go to an integrated school outside their neighborhood, and that enhances racial balance, we get additional State aid.

If a majority youngster chooses a school outside their neighborhood which will enhance racial balance in an integrated situation, we get additional State aid.

We also have built in within that formula money which assists us with the transportation that is required to transport a child from the neighborhood in which they live to the school of their choice.

Also, we have applied to the Federal Government in years past. For 6 years, we have applied to the Federal Government. We have had to meet all the tests of the civil rights requirements and legislation.

We have gone through all the hurdles in that regard each year to receive additional incentive money to help us with programs.

I might just highlight some of those programs. In fact, each year, we put out what we call a catalog of educational opportunities for the next school year. We have been doing this now for about 6 years.

This goes to our parents. They have an opportunity at various signup periods to register up for citywide schools. We encourage parochial and private school students to participate either full time or part time in our programs.

There are signup periods for them and there are signup periods for all students who are new to a school and must choose a school. For instance, a sixth grader going to a middle school will have to choose a seventh grade or middle school some place.

So we go through that process each year, and that accounts for about 20,000 to 25,000 students who must make choices each year, because they are moving out of a grade into a new school.

For minority youngsters, their choices range into more than 100 schools they could attend. Some of those are very specialized such as a multilanguage school where students go to school all day and learn German. They learn all their subjects in German.

We have one for French, we have one in Spanish. These are racially balanced schools. Students come to those schools from the entire city and can profit from those programs.

We have our own Montessori program, where students come from throughout the city.

The Federal funding has helped us particularly at the high school level in areas of high technology. The latest lab—and I wish

you will come visit it, because you would all learn something I am sure—is a lab for solar energy technology.

I just visited it the other day. The Federal moneys helped us equip that lab. It has the finest equipment, the latest technology, that we can get for our students. Two of them have graduated out of a program similar to that, in refrigeration, air-conditioning and heating, who are in business for themselves as 18-year-olds this fall.

We expect others coming out of the solar energy technology lab to have similar opportunities for self-employment as well as employment in those growing industries.

Last year, we dedicated a diesel technology lab. Again, we have students coming from all over the metropolitan area into these programs.

I have packets here. I would be very happy to share them with you. I am sure you would take a lot of pride and credit in that the Federal and State governments have contributed to the educational opportunities in a major city in America.

Mr. EDWARDS. We will be very happy to make them a part of the committee files.

Mr. MCMURRIN. This summer, we ran into a funding problem. On page 2 of my written testimony, I indicate that with repeal of ESAA title VI, our desegregation funds have been reduced from $6.9 million from the Federal Government to $2.1 million through the block grant approach to funding and we share 25 percent of that $2.1 million with private and parochial schools in the area.

Now, when it was under ESAA, we shared opportunities for them to get in on some of the staff development programs to meet the requirements of that law to share with the private and parochial schools. But we could not share the money directly with those schools because they could not meet the guidelines for integration. With the new block grants approach, we share approximately. $400,000 with the private and parochial schools which represent about 25 percent of our population.

I think the greatest disappointment we have is that in 1979, we reached a negotiated settlement in our court case and have gone after these moneys each year. This past year, our application was for a 5-year program with the Federal Government. We participated 1 year in the program and found to our dismay, really, that Congress had taken away the commitment and we have lost 4 additional years of funding under what we thought and had a great deal of confidence in. We believed the Federal Government was committed and would maintain that commitment with us.

It appears that the Federal Government has reneged on its obligation and commitment to the Milwaukee public school system. We had a 5-year grant and only received 1 year's funding under that grant.

We have taken our problems and difficulties to the State advisory committee which has authority to administer the block grant programs for Wisconsin and have shared with them our difficulties in reducing areas of funding from $6.9 to $2.1 million.

In their first presentation of formulas, little recognition was given to needy children in our State. But with a lot of work with that committee and with a one-vote margin by the chairman of the

committee at the State level, a formula was adopted to allocate at least 50 percent of the money at the State level to needy children throughout the entire State. That did tilt the funding toward Milwaukee that first year to help soften the blow.

I have been told, and they are soon going back to work, that this same committee, which makes a recommendation to our State superintendent, will find it very, very difficult to get that 50 percent for needy children in our State for another year. The pressure is on and it is felt from the Federal level all the way through our State government that there is no longer a commitment and we may receive as little as $500,000 next year, based on one allocation of these moneys on a per-pupil basis.

What seems particularly distressful to me is that in Milwaukee we are taking nearly a 65-percent Federal dollar cut, in difficult times. Other school districts in Wisconsin are getting more Federal money than they have ever had before.

Some individual school districts are getting four times as many dollars. I have a list of schools here this morning which the staff furnished me. One school district will get 11 times more money; 11 times more Federal money than last year. I think there is absolutely no justification, in these very difficult times, to spread the money out in a way that takes money away from the most needy and gives it to schools who never asked for it, may not even have wanted it, and now have it on a per-pupil basis.

I am sure they will have ways of spending it because every school needs money to help them with some expenditures. Some expenditures will utilize such small amounts of money in these very small districts that when you list out all the items that have been purchased, you will wonder what impact you as a Federal Government, we the people, have had upon the educational outcomes in those districts.

It appears to me that these moneys, if they are to be distributed, ought to go to the most needy and not be distributed to the less needy, especially in difficult times when we are all taking cuts. We had to cut our local budget by some $20 million. It is very difficult for me to explain to our people in Milwaukee, why we take these tremendous cuts all the way along the line, while adjacent districts are getting 4, 5, 7, and 11 times more Federal money than they had in times past.

Now, we have had a dream in our city, that we could make it the place where we could provide the finest conditions for education that you could provide anywhere. I think we have been well on our way in Milwaukee.

We have a very fine school system. However, it costs money to develop the programs here which are futuristic in their development. For instance, one of the first programs we started was computer data processing, a laboratory for 200 or 300 students.

I visited that lab recently. We have expanded it. There are 600 students in a lab that has business applications, mathematic applications, as well as the computer science technology. Students have graduated out of that program to go to MIT and other fine institutions in this country because of the background they received.

These are city children, disadvantaged children in many ways, but advantaged through these programs within the Milwaukee school system.

We are committed to integrated quality education, our State is committed, and the Federal Government should keep its commitment. We believe the Federal Government should maintain its pledge and commitment in regard to contracts or grants that they make to school systems, and I would urge this committee to take that stand.

Mr. EDWARDS. Thank you very much, Dr. McMurrin.

[The statement of Mr. McMurrin follows:]

PREPARED STATEMENT OF LEE R. MCMURRIN, PH. D., SUPERINTENDENT OF SCHOOLS, MILWAUKEE PUBLIC SCHOOLS, MILWAUKEE, WIS.

Mr. Chairman and Members of the Committee, it is my pleasure to appear before you today on behalf of the Milwaukee Public Schools and other large city school districts which may soon experience the symptoms of resegregation as a result of massive losses in federal funding for mandated desegregation.

We are in the business of education—quality education for all our boys and girls, regardless of race, sex, or national origin. In Milwaukee this is not a cliché but, rather, a reality—a goal achieved. While a federal court order fostered desegregation in our city, it has been achieved through the voluntary efforts of our parents and their children. Thirty-seven thousand children are transported daily to schools of their choice. How was our goal achieved? Through the development of a broad spectrum of elementary school program options, transitional middle school programs, and an array of career specialty high schools. Our children go to integrated schools because they want to be there. We have moved from the negative to the positive. Students no longer leave one school to attend another because it has a racial mix more to their liking. They now attend a particular school because it offers the program they want, and the fact that their school is racially integrated has become a plus factor.

These achievements did not come easy, nor are we now without problems and goals that still need to be overcome and achieved. However, the processes and programs through which we have met court ordered requirements and achieved many of our goals would not be the successes they are today without the federal desegregation funds which we received over a six-year period.

With the repeal of ESAA, Title VI, our desegregation funds have been reduced from $6.9 million in 1981-1982 to $2.1 million in block grant funds for 1982-83, funds which must be shared with private and parochial schools in an equitable manner.

Our greatest fear today concerns the future of our desegregation effort. The 1981-82 school year was the first year of a 5-year funding grant approved by the Office of Equal Educational Opportunity. With the repeal of ESAA, Title VI, by Congress, we not only show a net loss of $4.8 million in desegregation funding for 1982-83, but even greater losses over the next four years of the five-year commitment. When a federal agency makes such a commitment, under the authority of Congress, and then is forced to renege on its contractual agreement by the actions of that same Congress, the result is what you are hearing today. Since our commitment to quality education and social change requires a projected effort over the long term, we would prefer that our federal government, and particularly the Congress, be far more sensitive, responsive, and dependable. Nevertheless, as we initiated the salvage operation this summer, known as the block grant, our state advisory committee was convinced that the funding scales, at least for 1982-83, should be tipped toward Milwaukee. The resulting Wisconsin block grant formula allocated 50 percent of the funds based on need. Even so, several Wisconsin school districts which have never expressed nor even documented a need under former authorizations are now beneficiaries under the block grant, receiving as much as 3 to 4 times more in federal funds than they had ever received in the past—and all without any effort on their part. Given the best of formulas, the block grant concept, in practice, tends to flow dollars from the most needy to the less needy.

Although we in Milwaukee are applying our entire share of the block grant allocation to desegregation efforts, it still represents a reduction of $4.8 million over 1981-82, as I have already noted. It is likely that the Milwaukee share of block

grant funds next year will be in the $500,000 to $800,000 range, translating into a further reduction of approximately $1.5 million.

The successfully integrated programs which will suffer by the loss of ESAA funding and continuing reductions in block grant funds include elementary school programs such as language immersion (now offered in three foreign languages), gifted and talented, the arts, basic skills, and environmental education. Our middle schools are designed to continue and reinforce most of these activities on a transitional setting in preparation for high school. The many outstanding high school specialties include solar energy/heating/cooling technology, computer science, energy and environment, college prep and international baccalaureate, chemical technology, transportation, medical science and technology, food/tourism/recreation, agribusiness, visual and performing arts, small business, and international studies. All of these, as well as human relations support and staff development programs, were generated by federal ESAA funding.

The question today is our ability to continue attracting parents to these integrated school settings. Will that happen even when these successful programs can no longer be maintained and expanded to accommodate their needs and expectations? If they do not come, we will not be able to maintain court ordered requirements voluntarily—a move that would likely destroy any remaining community interest and support.

In closing, I want to thank you for the opportunity to appear before you today and ask that you seek to reverse a trend that may soon become irreversible, bringing to an end one of our most exciting American dreams—one that was close to coming true. Thank you.

Mr. EDWARDS. The last member of the panel to testify will be Eugene Reville, superintendent of the Buffalo Public Schools.

Mr. REVILLE. Mr. Chairman and members of the committee, thank you very much for this opportunity to talk about the Buffalo integration program and some of the problems we are having in funding.

You have my testimony there. Let me first start by talking a little bit about the Buffalo school system. It has 47,000 students. It has 76 schools. We have been under a court order to desegregate since April 1976.

We are still under a court order. We are still in court. As a matter of fact, we had considerable testimony this summer. At this particular time, there are 2 schools out of the 76 which are not under the guidelines of the court, which is 30 to 65 percent minority population.

We expect that the full school system will be desegregated in every school. The population of the school district is 46 percent white, 49 percent black, 5 percent Puerto Rican and native American.

Buffalo has snow occasionally. Although I was awful cool here in Washington last night, I expected a little warmer weather. It is warmer up in Buffalo than it is here in the District of Columbia. I invite you to get up there if you want to get a little warmer.

I would like to start with a quote of our judge, Judge John Curtin, Western District of New York, the chief judge and he has had control of this case from the beginning.

This is a quote from my testimony, and a quote from a most recent court order, June 30, 1982:

As a constant observer of the Buffalo Public Schools, the Court is aware that many improvements have been made in the school system, and many programs which have been instituted will result in additional improvements in the years ahead.

Standardized test scores have improved over the years. There has been no massive flight of majority students from the city schools, no violence or disruptions of any kind. A recent newspaper report from the Chicago Tribune quoted James Barnes,

the Director of the National Educational Strategic Center, which has monitored desegregation programs throughout the United States as saying: "Buffalo is a model. It has got to be the best there is."

So, the judge is very proud of the desegregation program in Buffalo and we are, too. First, in 1976, we were a heavily segregated city. The court order was a very severe one. In fact, it was commented on by the Second Circuit Court of Appeals.

Of the children in the school district, 76 percent were in schools that were segregated according to the court's guidelines. There was great segregation in Buffalo. There are now only two schools not under the court guidelines.

In 1976, there was great apprehension in Buffalo as to what would occur when we came under a court order. Buffalo is a typical northern city. It is heavily ethnic. They have large neighborhood populations of Italian, Polish, Irish, and the concern of the entire community is that they would have repeated in Buffalo what occurred in other school systems.

We went into a program which had education incentives with the idea that parents would move their children if they believed that the school they would send the children to would offer better educational programs.

There were a great number of parent meetings throughout the school system. Literally thousands of parents met at various times in helping design the programs which put together the desegregation program.

As a matter of fact, now, in a school that opened yesterday for the children, we had some 28,000 children who are bused for one reason or another. The term "busing," of course, is a very amorphous term. I don't—you bus for a great number of reasons, but right now, there are some 28,000 of our 47,000 children who board buses for various programs in the school system.

Last year, in September, we bused 3,000 children on a mandatory busing effort. The first of the mandatory busing in these schools systems. It worked very well. As a matter of fact, there were no problems whatsoever.

We recently polled the parents in the school system as to their satisfaction with the programs of busing, and they showed overwhelming support. As a matter of fact, I don't believe if we changed this program, the parents would want the children to go back to the schools they were in.

It stabilized the population in Buffalo, in the Buffalo schools. It attracted children from the private and parochial schools. We have 44 of our 76 schools that are one kind of specialty school or another.

We have 22 magnet schools, and we have 10 early childhood centers, and 14 what we call creative academies. Our academic achievements rose during the time of desegregation. Now, our children in reading, have 53 percent in the metropolitan achievement and 61 in mathematics and these occurred during a time of desegregation.

When I mention the fact we have not lost students, we did a study last year and presented it to the court that indicated that of the 29 school districts in Erie County, Buffalo has the lowest loss, percentage loss, of any school district of the 29.

Now, this is a year, by the way, of mandatory busing. The lowest percentage loss of any school district.

We did another study comparing them to the parochial and private schools in Buffalo and over a 5-year period where the Buffalo public schools lost 3 percent a year, over the 5-year period under desegregation, parochial and private schools lost 6 percent a year.

Where did those children go? They went into the Buffalo public schools. We have evidence that they flocked to our magnet schools and our early childhood centers and our academies.

I am proud of what has occurred in Buffalo, and so is the community. We have stabilized the schools, raised achievement scores, we have restored confidence in the schools in the city.

Now, we did precisely what the administration has said should be done. We went into heavily voluntary efforts. We closed schools. We closed 22 schools in the last 5 years. Recent articles where President Reagan had pointed out that what ought to be done is that magnet schools and voluntary efforts should be taken, and then selective judicious school closings should take place.

That is exactly what we did, and it worked in Buffalo. You won't be able to talk to anyone in our area who will say that it has not worked, and worked well.

We have support of the three Congressmen in the area. Recently, in a meeting with Secretary Bell, Congressman LaFalce, Congressman Nowak, and Congressman Kemp, all stated they felt the program in Buffalo has worked well and ought to be supported by more Federal money.

All three Congressmen have argued that.

What has occurred in Buffalo? We have, as you look at the information here, the most devastating and highest personal loss of any school district in the country. According to the statistics, an 87-percent cut in 1 year's time. We went from a $6.8 million, approximate, ESAA grant, down to less than $1 million available to the Buffalo public schools under the Consolidation and Improvement Act.

This isn't a cut, this is an obliteration of the programs in the city of Buffalo. In the face of the success we have had here, it seems incredible we have to suffer that. I missed a board meeting last night on the protests by many teachers and teacher aides who have lost their positions because of loss of Federal funds.

We recently had a court order out of Judge Curtin's office ordering the city of Buffalo to come up with 7.4 million added dollars in order to support the desegregation effort, so that the judge is supporting us by protecting his order, ordering the city to come up with added money because he recognized the importance of educational programs in supporting a desegregation effort.

I didn't believe there was anyone who didn't recognize that importance, or who didn't believe in voluntary effort, or the kind of desegregation effort we have had in Buffalo.

To briefly go over this testimony, I started off talking about the success. We did some boosting, in the first pages, because we felt that it improved the school system. Court-ordered desegregation in Buffalo improved the school system, stabilized the population and was one of the best things to happen to the Buffalo school system.

Segregation was very severe in Buffalo. The second page points out those statistics.

The gains in reading and mathematics achievement is pointed out here also. The great number of community meetings and the strong support we had in the community for the continuation of the present program is outlined in here.

Then we talked about the fact that the need and the importance of magnet schools, and emergency schools, basic grant funding for the success of our programs. When you say to a parent in south Buffalo that she has to get up 1 hour earlier to put her child on the bus, and transport the child across the town, you have to argue that she has to go to a better school, and that is what we did. We did that with having attractive programs supported by the Emergency School Aid Act. It was essential to the success of our program.

Then we refer to the immense cuts which occurred in Buffalo. The highest proportion in the Nation. The reason it was the highest proportion in the Nation is because of the relative success that Buffalo has had. We were successful in getting grants because of the success of our program.

Therefore, when the cuts came along, and the desegregation was not taken into consideration, we received the highest proportion of cuts in the Nation. So, the reward for success, for voluntary programs and for following the formula the administration said we should follow was an immense, an unconscionable, and I think an irresponsible cut by the administration.

We had a long meeting with Secretary Bell. Secretary Bell himself stated that he felt that the Congress should not have gone into the block grant funds as quickly as they had. Milwaukee and Buffalo are on 5-year plans. We have only been through 2 years of the 5-year plan.

Secretary Bell has stated to us publicly that it should have been phased in, that cities like Milwaukee and Buffalo should have been able to complete the 5-year program.

I plead with you to see if something can be done, perhaps new legislation, to see that magnet schools and specialty school programs are continued and we will be able to continue these voluntary efforts, because we are still under a court order in Buffalo, although it is one that has been helpful to us in the last few years.

We plead with you to assist us in cities like Buffalo which has successful programs, programs which the administration has argued they would like to see continued, we plead with you to see that we get adequate funding.

No school system should have to undergo the kind of painful cuts that we have had to undergo here in Buffalo.

Thank you very much for your time and attention.

[The statement of Mr. Reville follows:]

PREPARED STATEMENT OF EUGENE T. REVILLE, SUPERINTENDENT OF SCHOOLS, BUFFALO, N.Y.

In considering the impact of the Emergency School Aid Act and the Title IV-C Civil Rights funds on the Buffalo Public Schools, it must be made clear that many significant improvements have been made as a result of this funding. The funding received made possible a well planned, sustained effort and the development of excellent programs staffed by teachers, aides and support personnel. The withdrawal

of funding commitment will result in the decimation of those programs and their concomitant benefit to students.

Buffalo is operating what is probably the largest and most successful court-ordered, voluntary desegregation plan in the nation. The plan has been acclaimed by representatives of the U.S. Justice Department, the National Educational Strategic Center, and program officers of the U.S. Office of Education. Most recently, in a meeting with Buffalo area Congressmen, its success was acknowledged by Secretary Bell.

Visitors from the Ford Foundation, Race Desegregation Support Centers, Training Institutes, and the New York State Office of Multicultural Education are in unanimous agreement that Buffalo's program is outstanding and that the district is truly integrated. Perhaps United States District Judge John T. Curtin, who has presided in Buffalo's desegregation case since its inception, best summarized the progress made in his order of June 30, 1982. He stated:

"As a constant observer of the Buffalo Public Schools, the Court is aware that many improvements have been made in the School system, and many programs which have been instituted will result in additional improvements in the years ahead. Standardized test scores have improved over the years. There has been no massive flight of majority students from the City schools, no violence or disruptions of any kind. A recent newspaper report from the *Chicago Tribune* quoted James Barnes, the Director of the National Educational Strategic Center, which has monitored desegregation programs throughout the United States as saying: 'Buffalo is a model. * * * It has got to be the best there is.' " [1]

In the 1975–76 school year, about 76 percent of our total student body, some 43,000 students in 73 buildings, were in educational settings which did not conform to Court guidelines of 30 percent to 65 percent minority. Today, the district's magnet schools are balanced at a 50/50 ratio, with entrance waiting lists which include both races. These schools are at inner city sites which were originally considered impossible to integrate. In fact, throughout the system, only two elementary schools remain outside the Court guidelines for racial balance, and these have shown steady progress toward that objective. "Whatever analysis one utilized," said Judge Curtin in his August 8, 1980 order, "the Board has taken substantial steps to provide an ever-increasing number of children with an opportunity for an integrated education in a sound and stable system." [2]

Integration, however, is not the plan's only accomplishment. Academic achievement has improved dramatically, with a corresponding decrease in the need for remediation. Space and time do not permit a complete elaboration of this point, but at least one example can be cited, remembering that the example represents only one instance of many similar gains. In 1977, an inner city building, Fillmore Middle School, was converted to a magnet school and renamed Campus East. That year, the third grade class ranked at the 39th percentile on Mathematics PEP tests. By 1980, those same students were in the sixth grade and scored at the 70th percentile, a truly significant increase. When Metropolitan Achievement Tests were given in 1981, scores showed that 61 percent of the school's third grade students were above the 90th percentile, and only 4 percent of the sixth graders were below the 50th percentile.

This kind of achievement, coupled with a variety of innovative programs being offered, has been responsible for the community support evidenced in Buffalo. Our desegregation plan is predicated on the idea that there must be something educationally desirable and significant "at the end of the bus ride". To assure parent recognition of that desirability, community involvement has been constant and continuous since the start of our program. Ideas and plans were solicited and explained at meetings in all parts of the city. Evaluations and criticisms were carefully considered and many of them incorporated in the plan.

As a result, in the six years during which the various phases of our desegregation effort have been implemented, the image of the Buffalo Public Schools has changed so that people who had previously sought private educational experiences for their children are now actively supporting the public system. Buffalo has been cited as a city where, because of that success, "white flight" has not been a factor. In 1981, Buffalo lost only 2.1 percent of its school population while diocesan schools lost 4.8 percent and neighboring suburbs lost 5.2 percent. In the five years from 1977 to 1982, some 1,577 students transferred from private schools to our magnet schools.

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[1] Court Order, June 30, 1982, United States District Court, Western District of New York, Civ., 1972, 325, p. 6, Hon. Judge John T. Curtin.

[2] Court Order, August 8, 1980, United States District Court, Western District of New York, Civ., 1972, 325, p. 5, Hon. Judge John T. Curtin.

Many families changed their plans about moving out of the city, and some families moved back in—because of excellent and successful schools.

Judge Curtin referred to these gains in his June 19, 1980 order when he noted: "I believe that the plaintiffs and the defendants have made significant and very welcome progress toward a final settlement with respect to the remedy in this case. All concerned should be congratulated and thanked for the hard work which went into this effort. * * * the (Board) proposals are based upon the concept of offering parents and children an excellent educational program through which desegregation can be accomplished. A principal part of the proposal . . . promises to be an excellent educational experience attractive to all parents, and it promises to provide a new impetus in the desegregation process." [3]

In actual practice, the "promise" became a reality. Systemwide, we have seen improved student attendance, decreased student suspension, and decreased frequency of discipline problems. As exciting and encouraging as these improvements are, they represent only a small portion of the overall number of positive changes which have literally turned around the Buffalo Public Schools. These gains are now very seriously threatened, and, indeed, may be totally cancelled.

The vast majority of the gains cited were directly related to E.S.A.A. funding. These monies were appropriated for the specific purposes of assisting districts in designing and implementing desegregation plans. Of the twenty-nine titles now consolidated in Chapter 2 as a result of the Education Consolidation Improvement Act of 1981, E.S.A.A. intents and directions seem to be the most seriously subverted.

The Buffalo Magnet School Grant ranked among the top five in the country, and its Basic Project ranked as number 1 in New York State. From 1976 through 1982, the Buffalo Public Schools received a total of $28,975,608. In 1981-82 alone, we were awarded $6,715,056. To "replace" this amount, after deducting the non-public share of Buffalo's allocation, 1982-83 E.C.I.A. Chapter 2 funds will allow only $956,867. This is a drop, in one year, of almost 86 percent. This draconian decision will result in cuts in instructional materials, inservice, curriculum planning, and the elimination of 374 personnel. Magnet and special instructional programs cannot be sustained and the much needed increase in minority personnel, hired through E.S.A.A. funds, will be wiped out. The National Diffusion Network and Title IV-C programs, implemented in 48 of our 76 schools, will be lost. Extra-curricular activities, which have enriched students' cultural experiences, will be lost. Parent effectiveness training which helped us achieve and maintain peaceful implementation of integration programs will be eliminated.

Perhaps most important, parents who placed their children in Buffalo Public Schools, expecting and receiving specific quality educational programs, will be victimized because of broken educational commitments. Buffalo has had the distinction of being among the very few cities which were awarded basic and magnet grants for a five year period. The past year, 1981-82, marked only the second year of that five year cycle. Our plans for careful implementation of superior educational programs will grind to a halt. Parents will feel we have not kept faith; in reality, it is the five year Federal commitment that has been broken.

In a June 22, 1982 letter to our area Congressmen, Secretary Bell suggested that: "The Buffalo School district may, of course, use funds appropriated under Chapter 2 of the same Act for its desegregation program. Funds under Chapter 2 are made available to school districts to use in accordance with educational priorities that they identify at the local level."

Unfortunately, the Secretary has no solution to the problem of distributing $956,867 to pay for essential service costing $6,715,056. That kind of decrease is not a "phase-out" of services; it is an obliteration for which there is no "loaves and fishes" solution.

To the suggestion that the City of Buffalo should supply the needed funds, it should be noted that Buffalo has the highest rate of unemployment in the State and one of the highest in the nation. With a shrinking population and the problems of municipal and educational overburden, our city can ill afford to address all if, indeed, any of the fiscal problems caused by a virtual elimination of Federal and State aid.

Aid from private foundations is not the answer to our plight. Buffalo schools have long been successful in winning grants for a variety of programs from private foundations, but their funds, too, are limited and decreasing, and none of them are capable of providing a grant of approximately $6,000,000. The problem of private funding

[3] Court Order, June 19, 1980, United States District Court, Western District of New York Civ., 1972, 325. p 1-3.

is compounded by the fact that few of the country's largest businesses maintain headquarters in Buffalo, primarily because of the city's economic distress.

Finally, it has been suggested that "the schools do some belt tightening". The fact is that the schools already operate with limited fiscal resources. The demands of court-ordered desegregation have further strained those limited resources. When the public school "belt" tightens, it is students and their future welfare which are "squeezed".

The benefactors of the new federal fund allocations would seem to be some of the wealthier suburban districts which will be receiving a veritable windfall under E.C.I.A. For almost ten years, these districts have rejected suggestions by the Court and the Commissioner of Education to participate and cooperate with the Buffalo Public Schools in desegregation efforts. Now, they will receive a very considerable share of our hard-won monies and, at the same time, place Buffalo schools at an even greater economic disadvantage. Indeed, the effect of these cuts is felt most keenly by the poor and disadvantaged.[4] A recent Rand study identified East St. Louis, Camden, and eighty-four other areas as "trouble-prone suburbs" suffering from the same conditions which have been plaguing larger, central cities.[5] Schools in those "suburbs" and elsewhere could learn from Buffalo. We have met our problems with school programs which have proven to be educationally effective and worthy of replication. Current federal funding cuts will result in the annihilation of programs which have, more than incidentally, served as a template for other districts with similar problems.

As the only district in New York State under a Federal Court order to desegregate, Buffalo is in a unique position. We have used the challenge to effect some of the most dramatic improvements ever achieved by an urban school district. Buffalo, the second largest school district in New York State, seems destined to see more than six years of carefully planned, intensive effort thrown out almost overnight—due to the withdrawal of what was represented—only two years ago—to be long-term Federal support. There are no viable solutions to our problem except Federal support. The people of Buffalo, and its 47,000 public school students, have no other recourse.

What is at risk here are solid and creative educational programs and schools which are desegregated both in letter and in spirit. To achieve our ends, we directed positive action to clearly conceived purposes. We have an obligation to insure that the permanence and stability of our desegregation efforts be preserved and we need your support to keep the strong, attractive and relevant desegregation program we have in Buffalo.

Mr. EDWARDS. Thank you very much, Mr. Reville. I want to compliment all the members of the panel on very, very interesting and informative testimony.

I recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Dr. Reville, it is my understanding the New York State allocation formula contains a discrimination factor, is that the case, which puts the funds in the area where discrimination occurs, with racial criteria?

Mr. REVILLE. I am not aware of that. They give extra formula assistance to school systems that have extra need, so that Buffalo actually, now, with the $1.2 million it is receiving, is receiving twice what it would have received if the formula had just worked on an enrollment basis.

Mr. Congressman, there are the 20 districts in New York State and they made an attempt in New York State to distribute these funds to a good portion of them, and as a result, our northern wealthy suburbs are getting huge increases, as they have in Milwaukee, where the Buffalo City school system has been devastated.

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[4] Mary E. Vogel, "Educational Grant Consolidation," Harvard Educational Review—Vol. 52, No. 1, (May 1982) pp 169-188.

[5] Buffalo News, August 11, 1982 Citation of a Rand Corporation Study on Desegregation, (Santa Monica, California).

Mr. SENSENBRENNER. The information I have been given is that six States, Washington, Connecticut, Michigan, New Jersey, New York, and possibly California, do have racial criteria in their allocation formulas, and the other States do not.

If that is the case, isn't your complaint really with the formula that has been imposed from Albany rather than what is coming out of Washington, D.C.?

Mr. REVILLE. Mr. Congressman, perhaps we do have a complaint with Albany. I won't argue one way or the other on that particular point.

Mr. SENSENBRENNER. The statistics very clearly point out that your complaint is more with Albany that it is with Washington, because Buffalo lost 87.6 percent of its funding. New York City lost 40.5 percent of its funding and the rest of the State, 16.9 percent of its funding.

Why do you get the ax to the tune of almost 88 percent, where the districts outside of yours and New York's only get the ax to the tune of 17 percent?

Mr. REVILLE. Without arguing as to whether they have discriminated against Buffalo in New York State, the fact of the matter is in many discussions with the State, they first put in one formula which was turned down.

Mr. SENSENBRENNER. Who turned it down?

Mr. REVILLE. It was turned down by the Office of Education. Then they put in another formula. They changed the formula and it was finally approved by the Office of Education.

So the first thing I am going to say is that the formulas have to be approved here in the Federal Government by the Office of Education. If it is discriminating in New York State then it is approved here in the Federal Government, that particular type of discrimination.

So New York State might be wrong, but so is the Federal Government.

Mr. SENSENBRENNER. But only——

Mr. REVILLE. Let me finish, please.

Mr. SENSENBRENNER. But only 6 of the 50 States have got the racial criteria formula I referred to earlier on, sir, and it seemed to me if this formula was so essential and so mandatory to assure a "fair"—and I have used that term advisedly—distribution of funds throughout the States, then how come only 6 of the States have got that factor in the formula, including yours, and the other 44 do not?

Mr. REVILLE. Just let me say, obviously the cut in Buffalo was such that the formula is not working equitably. Would you agree with that?

Mr. SENSENBRENNER. I certainly would. If you lose 87.6 percent of your funds and the balance of the State loses 16.9——

Mr. REVILLE. I think the major problem, with a populous State like New York and with heavy urban areas, is an enrollment criterion which would commit former funds for integration to be distributed on an enrollment basis.

It just doesn't make any sense, Mr. Congressman, for that to occur, for New York State to do it, and for the Federal Government to approve it.

What you are saying is you think it is wrong, also.

Mr. SENSENBRENNER. I think I heard Mr. McMurrin protest an enrollment formula the way it had worked in the State of Wisconsin, so Mr. McMurrin's bane would be your benefit and vice versa.

Mr. REVILLE. No. The enrollment formula is our bane. Both of ours. That means every district in New York State receives integration funds, so that Williamsville and other towns which were requested by the court 5 years ago to participate in a desegregation effort and refused to do so, are now receiving funds which were essentially integration funds and it is because it is done on an enrollment basis.

I submit to you doing it on an enrollment basis is wrong. It should be done on a basis of need and what the Federal Government has done, it has abandoned successful voluntary integration programs by distributing these funds.

First of all, cutting by 35 percent and then distributing it on an enrollment basis. Wouldn't you agree with that?

Mr. SENSENBRENNER. No, I wouldn't agree with that.

Mr. REVILLE. What don't you agree with?

Mr. SENSENBRENNER. I don't agree with the result, and I think you are aiming your cannon in the wrong direction.

Mr. REVILLE. I think I am aiming it precisely in the right direction.

Mr. SENSENBRENNER. I think you are aiming it in the wrong direction, sir, because the Federal Government under the block grants proposal only disapproves the State formula if the procedures are incorrect, and the formula is developed at the State level.

Now, what you are doing is after losing the battle in Albany, you are coming here and you are blaming the Federal Government for a change in a formula that discriminates against your school district. I agree that the result discriminates against your school district, but that is a formula that was put together in Albany and which was laid before the Federal Government for its approval.

Mr. REVILLE. That is absolutely incorrect, Mr. Congressman. One, they put in an enrollment formula, the basis on the formula, then the States have little flexibility.

Ms. BROWN. Could I respond?

Mr. SENSENBRENNER. I have limited time.

I notice in your testimony, Dr. McMurrin, you said that some school districts in Wisconsin have had increases in Federal funds of 3 or 4 times more than they had in the past, and in one case 11 times, all without any effort on their part.

Now, again, isn't it a change in the allocation formula a problem better remedied in Madison than in Washington, D.C., because the State governments are the ones who put together the formulas and submit it to the U.S. Department of Education for approval?

Mr. MCMURRIN. Congressman, I think the legislation itself was faulty in putting out money from the Federal Government on a per-pupil count, which is like revenue-sharing money. Revenue on the basis of expressed needs acknowledged the need, has to be expressed by our Government as to where are the priorities, and then expressed by local districts that they certainly have those needs and need some assistance in those areas.

So, the legislation was faulty to start with.

I haven't the figures here, but the State of Alaska got more Federal aid under this block grant than they did the year before, and Wisconsin took a cut. That distresses me a great deal, also.

Some States would actually receive on a per-pupil basis more money. I am concerned about school districts receiving more money in difficult times. The formula itself, the law itself is faulty.

Mr. SENSENBRENNER. Again, we are running into our jurisdiction problem because this committee hasn't the jurisdiction over those formulas, but I would point out my recollection serves me that most of what I referred to is the educational establishment was violently opposed to the entire concept of block grants for educational programs, and that right off the bat, the majority of the Committee on Education and Labor, which does have jurisdiction over the formula, ended up coming up with a proposal in the 1981 reconciliation bill that was absolutely off the wall, and they were told to revise it, which they did on a hasty basis before that reconciliation bill passed.

I wish we could get some kind of constructive input on the part of you people who are administering block grants, rather than meeting your opposition to the entire concept of block grants.

I think there is something of an inconsistency on the part of local government officials generically. Many local government officials are all for block grants if they are the ones to do the administering, but they are against block grants at some other level of government like the States doing the administering.

You know, either block grants are good or block grants are bad, and if block grants are bad, we ought to take all categorical programs and programs—the revenue-sharing proposal that was passed during the Nixon administration, and let them die and let us go full tilt toward categoricals, after all these programs come up for review.

I have one other question for you, Dr. McMurrin, and it is more of a philosophical question.

The funds we are talking about were originally enacted by the Congress 10 years ago, as an emergency response to provide additional moneys to help school districts who were under court orders to comply with those court orders.

You feel once the emergency has passed, the funds should continue flowing to pay for permanent additions to a school system, like some of the very successful programs that you mentioned in part of your testimony, or do you think that other Government aid programs which are not of an emergency nature should be paying for those?

Mr. MCMURRIN. I think over a period of 10 years, we have added to our concepts of the emergency school money. One of those concepts was the bill put in by Senator John Glenn which provided for magnet schools and provided moneys and educational incentives and a voluntary approach to the integration of school systems.

As you have heard this morning, that approach has been very helpful. We are still under court orders. When you have that approach in major cities, you must have multiple-year funding.

I have people ask me if we can't get over this. Sometimes they feel desegregation is maybe like having the measles and you take it and then you get over it. Let me tell you that in major cities, it is

something we have to work at all the time and we have to work at it every year.

I would say philosophically that the Federal Government has a responsibility in this regard, along with State and local governments and local boards of education, and we would hope that the Federal Government maintains its commitment as long as we are working on desegregation and integration of our major cities.

Mr. SENSENBRENNER. Can you really call it an emergency? There were original startup costs for meeting a desegregation order which has been paid for, and the system is operational. Perhaps utilizing emergency funds rather than trying to get some kind of a permanent non-emergency Federal program adopted is really a mistaken emphasis, perhaps, on your part.

Granted the emergency funds have been there, but once the compliance cost is met, it seems to me that the emergency is over with.

Now, point No. 2 is the testimony you have made on multiyear funding, I think, is probably repeated down the hall in the Armed Services Committee by defense contractors who have come to rely on Federal contracts and all of a sudden Congress changes priorities and deauthorizes or fails to fund various weapons gimmicks that were authorized in the past.

I think all we are doing is just changing the wording. The thrust of the testimony between those folks and you are the same. So I guess there are different financial and fiscal implications and changing priorities—multiyear Federal programs are reviewed and changed, and I don't think that given the fiscal times that we have today, any kind of a long-term multiyear funding approach is set in steel or concrete whether it be in the defense area or any other area.

Mr. MCMURRIN. I hate to be thrown in the same category as defense contractors, but let me say this: I will tell you what grieves me as a citizen is that our Federal Government would take these precious dollars and give school districts more money, some of them 11 times more money, and give States more money than they have ever before, these precious dollars, knowing full well they are taking them away from commitments the Government made to major cities, and Milwaukee was one of those.

Mr. SENSENBRENNER. The Federal Government didn't change the formula, it was the State of Wisconsin that changed the formula.

Mr. MCMURRIN. No.

Mr. SENSENBRENNER. That increased the funding 11 times because the formula was submitted to the Federal Government for approval by the State of Wisconsin.

Mr. MCMURRIN. Mr. Sensenbrenner, you are missing——

Mr. SENSENBRENNER. Again, your complaint is with Madison and not with Washington.

Mr. MCMURRIN. I think our complaint is in the right place. The law was structured here in Washington, not Madison. Madison is trying to administer a faulty law that distributed the money on a per-pupil basis, so that Alaska—how do you feel about that, Alaska getting more money and Wisconsin getting cuts, and even in Wisconsin the money going to school districts who do not need it, did not ask for it, and are really ashamed to take it in these difficult times.

Mr. SENSENBRENNER. I just point out we didn't really have an opportunity last year to review that formula, because of monkeyshines that were going on in the committee of jurisdiction in response to the reconciliation instructions that were given to them by the Congress in the first budget resolution.

I do notice that Minnesota, which isn't too different from Wisconsin, added 15.4 percent in increase from funding from $6.6 million to $7.6 million. I can't explain that. That is not the jurisdiction of this committee.

Again, I think your canon is being aimed in the wrong direction. The Education and Labor Committee decided not to be a constructive participant in the reconciliation process in 1981 and we see what the results are.

Mr. REVILLE. Mr. Chairman, I just wanted to point out that we have an emergency in Buffalo. We are still under court order to desegregate. The judge has not given up jurisdiction and we are still desegregating.

Also, part of this original law had to do with magnet schools. There is a voluntary desegregation of schools and I have to agree with the alleged irresponsible statement of Dr. McMurrin by pointing out by taking away the means which would permit us to voluntarily desegregate the schools, encourages mandatory busing.

Mr. SENSENBRENNER. Well, Dr. Reville, I would like to point out if that is what happens in Milwaukee I think the Milwaukee Public School System will unilaterally be cutting its State aid for voluntary transfers, which was the law which I introduced in the State legislature and argues for passage and got the suburban school districts to support.

Now, if that is the decision which the Milwaukee Public School District makes, then that is a unilateral cut in the amount of money they will receive from the State of Wisconsin.

Mr. REVILLE. No, that is a decision made by the Federal Government. We keep going back to the States. The Federal Government was the one that cut down on the amount of money available for voluntary desegregation and also put in a formula which encourages inequity and I think encourages forced busing.

Mr. SENSENBRENNER. How a school system complies with the court order, sir, is a matter between the school system and the court which imposed that order.

It is not a matter between the school system and the Federal Government.

Mr. REVILLE. That is an Alice in Wonderland reply to the question. Now, if you don't have the money in order to put in the programs, educational programs which attract parents to send the children to these magnet schools and the Federal Government cuts these funds, to say that sort of thing is just not facing reality.

Mr. SENSENBRENNER. All I am hearing from you people is that you don't want to make the block grant program work, you opposed it last year, you continue to oppose it and the sky is the limit on the amount of funding.

But the generosity of the taxpayers is not unlimited.

Mr. REVILLE. That is a different argument.

Mr. EDWARDS. We will continue this dialog after we vote.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

Before I recognize the gentleman from Illinois, Mr. Husk, you were burning to make a contribution here.

Mr. HUSK. Perhaps what I am going to say, I will also incorporate in a letter to Mr. Sensenbrenner because I know that many times the transcript of the hearings are not always referred to, as they should be.

I wanted to quote from the Congressional Record of July 29, 1981; we describe under section 565 the legislation, or the Education Consolidation and Improvement Act of 1981, chapter 2, the following set of ideas related to the allocation of funds under chapter 2. This is the House version of the bill:

"From the sums made available each year"——

Mr. EDWARDS. Who was speaking?

Mr. HUSK. This is the legislation itself; section 565, part A.

"From the sums made available each year under section 563," which is the amount of money going for chapter 2, "the State agency shall distribute not less than 80 percent to local education agencies with in such State."

Now I will put the emphasis on these words:

According to the relative enrollment in public and nonpublic schools within school districts of such agencies, adjusted in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local education agencies which have the greatest numbers of percentages of students whose education imposes a higher than average cost per child, such as first, children from low income families, second, children living in economically depressed urban rural areas; and third, children living in sparsely populated areas.

It goes on further under part B to say:

"The Secretary shall approve criteria suggested by the State Education Agency for adjusting allocations under section A if such criteria are reasonably calculated to produce an equitable distribution of funds with reference to the factors set forth in subsection A.

But we know, as this law has been implemented to date, that the Secretary has not looked for any more from the States as to the effect of the distribution formulas that have been submitted to him. And we also know that the Secretary has not suggested to any State as to what ought to be in the criteria for the State formula.

I want to also allude to—this is the House debate on this bill, this is the House version of the bill.

On the Senate side where a similar provision or similar enactment was made, there is in Senate Committee Report 97-139—and it is included in my testimony and the letter we sent to Secretary Bell—it says on page 896 of that committee report.

Since funds previously earmarked by school desegregation assistants have been consolidated into the subpart the committee expects that recognition of additional cost incurred by an effort to alleviate the isolation of minority-group children where appropriate will be included among the needs factors considered in the allocation of funds to local education agencies.

Now Mr. Sensenbrenner pointed out only six States responded to that requirement. I affirm that the reason only six States responded to that factor was not because it was not a factor but because the Secretary failed to make the position clear from the national level that this was going to be one of the criteria that he would be

looking at and the other criteria which he completely disregards is *the distributional effects of the formula.*

Anybody who represents a congressional district knows that when you look at a formula, you look at the formula and you say "Yes, it looks pretty good" and then you look at the distribution and you see what the impact is on the needs of your locality.

Under what we see, and as we demonstrate in our tables in our testimony is that when you look at the distributional effect what you find is that more funds are going to school districts outside of those with the greatest need, so therefore on the basis of looking at the effects of a formula, the formula is not meeting the needs as stated in the legislation and that is the point I wanted to make.

Mr. EDWARDS. Are you saying the Secretary could have changed the formula?

Mr. HUSK. No, he would not change the formula but what he would do would be in his regulations, which he failed to do, he would have laid out a set of principles or guidelines to the States by which they would be able to measure whether they had indeed come about with a reasonable formula for allocating funds and he could have stated to them: "Among the things I will be looking at, I will be looking at the distributional effect is the Congress has asked me to do under section 565–A and the failure to do that in our view is the large reason why we have the allocation of funds going the way they are going."

Mr. EDWARDS. Isn't the testimony that the law requires distribution on a per-child basis?

Mr. HUSK. It goes on immediately to talk about, though, concentrations of high-need pupils and I have to point out—let's go back 1 year, or 1 year and 1 month to the time when this legislation was being considered. Here's a piece of legislation that has 1 day of testimony, 1 day of testimony before the committee of jurisdiction.

On the Senate side it had 1 day. This legislation did not come to the floor through the normal legislative process of debate, consideration and so forth. It came to the floor in a budget bill and it completely revoked and rescinded all of the aspects of the legislation that preceded it.

Without any debate. Look back in the Congressional Record and see how much space was given to debating this particular bill, this consolidation. Very, very little. Then look also at the constraint of the Congress to pass a budget resolution by September 30.

So you have July 29, you have approximately 60 days for the Congress to come up with a budget which is reasonable; which is rational and so forth and at the same time to consider all the elements that are included in this consolidation.

I think it is comparative in the court that the Secretary would have paid special attention and given special heed to this provision. This is the only place in all the legislation where it talks about "Secretary shall." Everything else is permissive in the legislation.

Only in this aspect and this point does he say he shall.

In our view, he has not. We sent a letter, as I indicated in testimony, July 6. I guess it was at the end of July this past summer the Secretary issued regulations and didn't even give a toss of the head to our comments. In fact, until just last week he hasn't even responded to our letter.

It is that kind of lack of leadership that I alluded to in the beginning. The continuity. No matter what the administration was, whether it be Richard Nixon, Gerald Ford or Jimmy Carter, the kind of initiative that said, No, it is not maybe a national concern, emergency school aid is not a national concern that requires billions and billions of expenditures but we do think it requires the significant, timely expenditures which are going to help the particular school districts we are talking about, help them implement the desegregation plans. That has been pushed aside.

Mr. EDWARDS. The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

I regret, gentleman, I missed your testimony in chief. I did read the submissions and I hope my questions are not redundant.

Mr. Husk, on page 5 of your submission you indicated that the Secretary of Education lacked sufficient information to even accept the State allocation formulas. You touched on that just briefly, but would you expand on that point.

Mr. HUSK. I think the best response, Mr. Washington, is to look at the dollar tables that we presented on pages 7 and 8 of the statement.

Now as we look at the first column, 1981 and 1982—let us go to your State of Illinois as an example. We see that the State of Illinois for all of the consolidated programs including emergency school aid was receiving $22 million in categorical assistance.

Chicago had $6.8 million of that, close to $7 million of that and the balance of the State had $15 million. Now the State comes forward with a formula to the Secretary and that formula there allocating $21 million. The Secretary never asked the question, which we were able to ask the States and the States were able to respond with some information about, as to what the distributional effects of that formula are going to be and as we look at the distributional effects, what we see is that Chicago loses $2 million, even though the amount of money to the State is only a loss of about $900,000.

We could ask the question: How relevant were the criteria that you had in your State formula for high-need pupils, if the regional effect of your formula is to provide not only less resources to Chicago but more resources to other school districts throughout the State?

Is it some phenomenon we were not aware of, that has somehow changed the nearly 50 percent low income factor of children in the city of Chicago and somehow they have gone out somewhere else, they have gone into the suburbs somewhere or downstate or somewhere? I think what we are saying is, in most courts and in most tribunals when you look at a formula, you not only look at a formula to see whether it is fair on the face of it, you look at it to see what its effect is and if the effect is discriminator, if the effect is injurious to those who have the greatest need, then you conclude that this is not an acceptable formula.

The Secretary failed to take the responsibility to make this point initially with the State of Illinois and he failed to make this point in a subsequent time factor when it was submitted to him for approval.

Mr. WASHINGTON. As you explain it, it seems obvious the question should be asked: Do you have any suggestion as to why it was not?

Mr. HUSK. Well, I think one of the reasons we find in the regulations is that the administration made the claim that, contrary to what Mr. Sensenbrenner was saying, that his is not a block grant. They said this is a consolidation program. And because it is a consolidation program, it doesn't fall within the requirements of other budget reconciliation legislation which did create block grants and therefore we do not have to collect data on the impacts of the block grant formula.

In other words, in the Budget Reconciliation Act, any other program that was called block grant, there was a requirement on the administration to see what was the effect before they would act.

In this, though, they were making the claim there was not a block grant but this is a consolidation bill and therefore they didn't have to apply that, then they do a little back flip.

So we asked the question: Well, what kind of requirements are you making the States impose upon a local school district to approve an application? We have no problem with Buffalo or Milwaukee in submitting an application, meeting civil rights requirements. These school districts and our school districts, the 30 we represent, have through hurdle after hurdle. They have been through the process.

It has been a long educative process. They can meet the civil rights requirement as established under title 6. But then the administration uses the other argument that although these programs are consolidated they are not consolidated to the extent that they incorporate all the regulations and all of the other things that were in the original legislation.

So on the one hand they are arguing it is not a block grant so that they cannot collect information. On the other hand, they are arguing they can't impose any stringent regulations on the recipients of the funds because they are block grants.

It is just an interesting kind of gymnastics that goes on. As I said earlier, what really influences us about this is, it is really a complete departure from previous administrations, no matter which administration.

Mr. WASHINGTON. In short then, the Secretary accepted the formula even before they had regulations?

Mr. HUSK. That is correct. We still have no regulations. The regulations were disapproved by the Congress in, I think, it was early August. Congress said: You have failed to take into consideration the General Education Provisions Act that your committee on Education and Labor had in there which disallows those regulations. So now we have money distributed with no regulations.

The only governing piece of paper that the Secretary can use to make his decisions right now are his proposed regulations. We would make the point they don't reflect the legislative requirement.

Mr. WASHINGTON. In brief, what would be your suggestion for straightening up this matter?

Mr. HUSK. No. 1, I think since we have a gap in the approval of the legislative regulations, the administration does have an oppor-

tunity to address this particular concern and we are going to be taking the approach: Here's our position and we think that you can address this. You have an opportunity now. Maybe you can't affect the impact of the formula this year but you can do it in subsequent years.

The second remedy would be for the Congress to recognize that it feels what has happened here, because of the confusion and because of the rush in getting this legislation passed, that they have reneged on a 5-year commitment for desegregation, that they have reneged on a serious commitment to help school districts carry out their responsibilities and that maybe there might be some special legislation generated which would direct itself specifically to this particular aspect of need.

Our third point is I guess if the Secretary cannot do what he is supposed to do, then we will continue to pursue legal recourse and action to sue him and bring him to court on the basis that he is failing to carry out the statute as it was enacted.

Mr. EDWARDS. Mr. Boyd.

Mr. BOYD. Thank you, Mr. Chairman. Mr. Husk, there is nothing in the law to prohibit States from including as higher cost children, children involved in desegregation plans, is there?

Mr. HUSK. No, there is nothing to prohibit that, but there is also an obligation as far as I can see——

Mr. BOYD. I asked you if there was something to prohibit it.

Mr. HUSK. No, there is nothing to prohibit it.

Mr. BOYD. And indeed, five States have done so, have they not?

Mr. HUSK. Five States have done so.

Mr. BOYD. And those formula requests have been approved by the Secretary; have they not?

Mr. HUSK. Yes.

Mr. BOYD. So if we are thinking about effects we could say the effect of approval is to suggest other States might do the same. Certainly to suggest those formulas which do include desegregating children as higher cost children are a legitimate formula; is that correct?

Mr. HUSK. That is correct.

Mr. BOYD. Mr. Reville has taken the microphone. I have a couple of questions, if I may——

Mr. HUSK. Could I respond to what you were saying there? After asking the question, you don't want any other side——

Mr. BOYD. I am trying to move along as fast as I can because we have to put on another witness.

Mr. HUSK. Well, I can go along with that, too. I can say there are six States that had approved formulas, that had desegregation. There were 44 who then—I could say the Secretary approved them. Did he not issue any criteria to the other 44 States that would suggest that they ought to be included?

Mr. BOYD. Well, the other 44 States have agreed, have they not?

Mr. HUSK. I think that he neglected to look at the total aspect and legislative history of this bill and that is the Senate language which calls specific attention to this particular need.

Mr. BOYD. It was probably that language which was the basis of the Secretary's approval of the five formulas I mentioned before.

Mr. Reville.

Mr. REVILLE. If I am not mistaken, New York State was one of those six States that permits that and look at the result. I think the major problem is one that Mr. Husk pointed out, that the Secretary has not looked at the results as carefully as he should and the other is the enrollment.

You have 720 districts in New York State. If you put it on the basis of enrollment then that is what is going to occur and the districts which are not undergoing desegregation are going to have—are going to be obliterated, such as the Buffalo City school district.

Mr. BOYD. The law requires States give at least 80 percent of their money to local districts. That means the State organization itself can retain about 20 percent. Is that true in the State of New York?

Mr. REVILLE. That is correct.

Mr. BOYD. That means New York State has retained $2.62 million. Have you approached the State for any part of that money?

Mr. REVILLE. Absolutely, we have approached the State and continue to do that.

Mr. BOYD. What is the result?

Mr. REVILLE. Excuse me. Let me continue. The $6.2 million for the entire State and the administration of the program in the State is less money than we received last year. We are dealing with nickles and dimes on this.

Mr. BOYD. I understand that, but have you talked with the State in an effort to get more money?

Mr. REVILLE. Yes.

Mr. BOYD. What is the response?

Mr. REVILLE. The response of the State so far is that they need to distribute that money to programs throughout the State and we will get some share of it.

Mr. BOYD. They have denied you the bulk of it; is that a correct statement?

Mr. REVILLE. Yes, but again the amount of money is so little it couldn't be of much help to us. The fact of the matter is, first of all, the money was cut back 35 percent in New York State and the fact of doing it on an enrollment basis, which is part of the law restricts the State from giving—one of the attempts the State made last year was to have a hold harmless for districts like Buffalo and this was turned down by the Secretary.

Mr. BOYD. Every little bit helps. How much money has Buffalo received in the last 10 years under the ESAA program?

Mr. REVILLE. I have it in my testimony. We haven't received the entire 10 years.

Mr. BOYD. Through 1976.

Mr. REVILLE. $29 million.

Mr. BOYD. Mr. McMurrin, how much has Milwaukee received in that same time?

Mr. MCMURRIN. $38,972,944.

Mr. BOYD. Did the Wisconsin State Advisory Committee retain its 20 percent of the $8.9 million allocated?

Mr. MCMURRIN. For the State superintendent's discretion.

Mr. BOYD. What has he done with it?

Mr. MCMURRIN. He has kept most of it for his own departments to administer those programs throughout the State. However, we

did plead with him and our advisory committee was aware of this; that, again, Milwaukee was suffering so much in the cuts that for 1 year he is providing—and we have to share this with private parochial schools—a $500,000 grant, a demonstration grant, out of the 20 percent.

Mr. BOYD. Have you suggested to him that the formula be rearranged to demonstrate that children involved in desegregation efforts are higher cost children?

Mr. MCMURRIN. We certainly have. We have pled our case and we have achieved some results but the entire State allocation is very close to what Milwaukee received last year so you can see the problem.

Mr. BOYD. Has the formula been changed consistent with that request?

Mr. MCMURRIN. Yes. The first report that came out of the department of public instruction, out of the state superintendent's staff, allocated 70 percent on a per pupil basis, 30 percent on a needs basis and the formula hasn't been fully developed to indicate how much each school district would get out of that 30 percent.

There are various ways of determining needs. We have argued that it has been devastating to our city because with that formula we would have had some $700,000 and one-fourth of that would have to be shared with public and private schools so we would be down close to a $500,000 with this formula.

So we made our case, and let me tell you the politics of it were very difficult because you had representatives on this Governor's advisory committee from all over the State and I think there was only one resident of the city of Milwaukee on that committee.

Mr. REVILLE. That is our experience. We had one resident of the city of Buffalo.

Mr. MCMURRIN. We were also hurt. We tried to get the State to give preference to needy children. We were campaigning in other districts that have needs similar to ours to get some of that assistance and help.

By the chairman voting in favor of the formula, 50–50 that I testified on, we were able to get that for this year but it is going to be uphill again in our State.

Mr. EDWARDS. We thank the witnesses very much for a not only lively but very, very helpful testimony. It certainly will help the subcommittee and indeed the full Judiciary Committee in fulfilling its obligation in civil rights, because we have to have a very large interest in equal education and desegregation.

We thank you very much.

We apologize for delaying our next witness. We have Prof. Gary Orfield of the University of Chicago, who has been more than patient, but I am sure he enjoyed the other witnesses as much as we did.

TESTIMONY OF PROF. GARY ORFIELD, UNIVERSITY OF CHICAGO

Mr. EDWARDS. Without objection, the report will be printed in full in the record, and Mr. Orfield may proceed.

[The report of Mr. Orfield follows:]

Joint Center
For
Political Studies

WORKING PAPER: DESEGREGATION OF
BLACK AND HISPANIC STUDENTS
FROM 1968 TO 1980

A Report to the Subcommittee on Civil
and Constitutional Rights of the
Committee on the Judiciary of the
United States House of Representatives

Prepared by
Gary Orfield,
Professor of Political Science,
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for the
Joint Center for Political Studies
Washington, D.C. 1982

BACKGROUND

In the fall of 1981, the House Subcommittee on Civil and Constitutional Rights held extensive hearings on school desegregation. During the course of the hearings, subcommittee members and staff determined that the most recent federal data needed to be examined to learn about progress and problems in school desegregation. What direction had the nation been moving during the seventies? Subcommittee Chairman Don Edwards directed a series of inquiries to the U.S. Department of Education, asking for basic data on the segregation of blacks and Hispanics and the kinds of changes that had occurred between 1968 and 1980, a period which includes all of the controversial urban desegregation orders. The Education Department provided this data in the form of printouts produced by the DBS Corporation under subcontract to Opportunity Systems Inc. in Washington. Chairman Edwards asked the Joint Center for Political Studies to examine the data and report to the subcommittee on the major implications. This report, prepared by Gary Orfield, professor of political science, public policy, and education at the University of Chicago under contract to the Joint Center, responds to that request.

The 1980 national and regional data were first computed for this report and are released here for the first time. For some measures, 1970-1980 comparisons were chosen to permit comparison with data showing changes in overall population between censuses.

THE BASIC TRENDS

Segregation of black students declined significantly in the United States between 1968 and 1980. The most substantial changes, however, were limited to the regions that had been segregated by law before 1954--the 11 states of the South and the 6 border states. Most of this change had been achieved by 1972, and, in fact, the South has recently become slightly more segregated.

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During the seventies, all regions of the country except the Northeast reduced black segregation to some degree. The Northeast, by far the nation's most segregated region, became more segregated during the decade. The 1980-1981 school year found almost half of the black students in the Northeast in 90-100 percent minority schools, while fewer than one quarter of the black students in the South were in such schools.

The 1980 data show millions of children in integrated schools, particularly in the South, where segregation had been most severe. But it also shows that 63 percent of black students around the country remain in schools that are predominantly minority and about a third (33.2 percent) are still in intensely segregated schools with 90-100 percent minority enrollment.

The data strongly suggest that the much greater progress in the southern and border states was related to a strong enforcement effort by the federal government and the federal courts, which was primarily directed at southern segregation. When President Kennedy asked Congress to enact a civil rights bill in 1963, 98 percent of black students in the South were in all-black schools and almost all whites attended all-white schools. Enforcement of the 1964 Civil Rights Act and a number of major court decisions on southern segregation cut the number of southern black students in 99-100 percent black schools to 25 percent by 1968. During the 1968-1972 period, when the statistics in Tables 1,2, and 11 show the most dramatic changes recorded during this period, the Supreme Court made two extremely important decisions, in the cases of Alexander v. Holmes and Swann v. Charlotte-Mecklenburg. These decisions required that southern districts desegregate immediately and authorized the use of busing when it was the only way desegregation could be accomplished. These decisions had immediate impacts in hundreds of districts and sharply decreased segregation of black and white students in the South.

Neither the executive branch nor the Supreme Court has issued such clear directives for desegregation policy in the North and West, and progress in these areas has been much slower. By 1970, the South was the least segregated region for blacks, and the gap has grown since then.

The data on Hispanic segregation trends tell a very different story and raise very important research and policy questions. There was no progress on integrating Latino students in public schools in the seventies. In fact, each region of the country has become more segregated for Hispanics as their numbers have rapidly grown in American society. Although the Supreme Court ruled, in the 1973 Denver case, that Hispanics as well as blacks should be desegregated when a school board was ordered to implement a plan, very little has been done to implement this policy, and very few cases have been brought to court.

Hispanics increased rapidly, from about a twentieth of the public school students in 1970 to about a twelfth in 1980. As their numbers grew, so did their separation from whites.* During the seventies, the substantial increase of Hispanic segregation and the gradual decline of black segregation meant that by 1980, the typical Hispanic student attended a school that was more segregated than that of the typical black student (Tables 1-6). The consistent trend toward greater segregation of Hispanics and the acceleration of that trend in the late 1970s suggest that the gap could widen. In 1980, the typical Hispanic student attended a school in which 35.5 percent of the children were white; the typical black student, a school that was very slightly more integrated, 36.2 percent white (Tables 5 and 6). In 1980, 63

*The term "white," as used in this report, should be understood to mean "non-Hispanic white," since Hispanics can be of any racial background and many are all or part white. The term "Anglo" would be more appropriate but is not used here because it is little known outside the Southwest.

percent of black students and 68 percent of Hispanic students were in schools that were predominantly minority. Thirty-three percent of blacks and 29 percent of Hispanics were in intensely segregated schools, with 90-100 percent minority children.

Not only black students but whites as well were far more likely to attend substantially integrated schools in the South than in the North. To be sure, the North and West had far smaller proportions of black students to integrate (27 percent of students in the South were black; 18 percent in the border states; 14 percent in the Northeast; 12 percent in the Midwest; and 7 percent in the West). But even taking these disparities into account, the North and West seem to be doing much less to achieve integration. In the South, the percentage of white public-school students in schools that were 90-100 percent white declined from 71 percent in 1968 to 36 percent in 1980. During the same period, there was virtually no change in the Northeast and a much smaller change in the Midwest (Table 9). Southern white students are growing up in schools where minority students are a major presence, but many white children in the Northeast and Midwest are severely isolated from nonwhite children (Table 7).

BLACK SEGREGATION

The statistics on black segregation trends contain several important messages. Dramatic progress is possible. The decisive changes from 1968-1972 have been consolidated in the southern and border states. But the momentum of increasing integration may be lost unless there are new government initiatives. This is suggested by the small increase in segregation from 1978 to 1980 and the small increase in the South (Tables 1, 2, 11). Third, there

are extremely wide regional discrepancies, and the basic problems of black segregation have changed almost beyond recognition since the fifties and sixties.

The problem of segregation for blacks is basically centered in the large older industrial states and in large cities that have experienced major racial change. The Northeast is the most segregated and has become more segregated during the seventies, because black students there are concentrated in large, predominantly nonwhite school districts that have never been ordered to implement a major desegregation plan, even within the central city.

State-by-state data show that intense segregation of black students is now focused in five areas of the United States. In fourteen states and the District of Columbia, at least 30 percent of black students are in schools that have 90-100 percent minority students. The five areas are:

— Pennsylvania-New Jersey-New York-Connecticut

— Illinois-Missouri-Indiana-Michigan

-- Washington, D.C.-Maryland

— Alabama-Mississippi-Louisiana-Texas

-- California

Fourteen other states did have at least 95 percent of their black students in schools with at least 40 percent white students. To be sure, most of these states had relatively few black students at all, but the list does include Kentucky and Delaware, which had severe segregation until the implementation of metropolitan desegregation in their largest cities, Louisville and Wilmington. A number of other states had very modest problems of segregation that could be resolved without major changes.

The most segregated state in the United States for black students in 1980 was Illinois. Some 68 percent of Illinois's black students were in schools

that were 90-100 percent minority. (In the District of Columbia, which is not counted as a state, the comparable percentage is 96.) Illinois is followed by New York (56 percent), Michigan (51 percent), New Jersey (50 percent), Pennsylvania (49 percent), Missouri (44 percent), and California (41 percent). All of these industrial states lead all southern states in segregation of black students. The most segregated southern states, Louisiana and Mississippi, had 37 percent of their black students in such intensely segregated schools in 1980. The typical black student in Alabama was in a school with more than twice as high a proportion of white students than his counterpart in Illinois.

Looking at the changes in the composition of the school attended by a typical black student by state during the seventies, the data show dramatic gains in a few states, little change in others, and significant backward movement in a handful. The most striking increases in the white proportion of the student body in schools attended by blacks (in states with at least 5 percent black students) were in Nebraska (a 33 percent increase), Kentucky (25 percent), Delaware (22 percent), Wisconsin (19 percent), Oklahoma (16 percent), and Ohio (15 percent). In all of these states, major court orders affected their largest cities. Two had metropolitan merger orders. The only states to show a substantial decline in the white representation in schools attended by blacks were New York (-6.2 percent) and New Jersey (-6.0 percent). There was a small decline in Connecticut.

The statistics on segregation of blacks show that the nation took a small but important step toward desegregated education in the seventies, and that the southern and border regions have made historic progress. The Northeast has moved against this stream of change, increasing its already intense segregation and operating the nation's most segregated schools.

HISPANIC SEGREGATION

Perhaps the most significant change in public school segregation in the seventies was the clear and sharp increase of segregation of Hispanics. Hispanics are a large and rapidly growing group, which already accounts for about a twelfth of U.S. students. Hispanic children are now more likely than black children to be in predominantly minority schools, though they are less likely to be in schools that are intensely segregated (90-100 percent minority). An indication of this change is the fact that in 1970, Hispanic students in the two least segregated regions of the country--the Midwest and the West--experienced the greatest increases in segregation. Hispanic students in the West and Northeast were far more likely to be in predominantly minority schools in 1980 than black students in the South.

There are a number of possible explanations for the increasing segregation. In the first place, as a group that had been a small minority in a particular area grows and the ethnic composition of the entire local population changes, children tend to be in schools with a higher proportion of minorities even if there is a good desegregation plan. Secondly, Hispanics tend to choose large metropolitan areas as a place of residence to an extraordinary degree--even more so than blacks--and these areas, particularly their central cities, are experiencing rapid increases in their proportion of minority children. The 1980 census showed that 84 percent of Hispanics lived in metropolitan areas and 41 percent lived in central cities of metropolitan areas with more than a million residents. Hispanic families were more than six times as likely as whites to reside in the central cities of the largest metropolitan areas (over three million). It is likely, as well, that

discrimination of the type that helped force blacks into ghettos early in the century plays a part in this, as do the problems of language and immigration status.

The long term implications of these trends are unclear. The fact that we have another large, rapidly growing minority that is already by some measures more segregated than blacks and the fact that the trend is toward much greater segregation suggest the need for a serious examination of an urban society where there would be essentially separate systems of schooling not only for blacks and whites but also for Latinos.

As a whole, the West is by far the most important region for Hispanics, and what happens to Hispanic students will have a far larger impact on the West than on any other region. The West has 44 percent of the nation's Latino students, although it has only 19 percent of the nation's students. Thus, almost one fifth of the students in the West's public schools are Hispanic--a far larger proportion than in any other region (Table 10). Outside the West, large Hispanic populations are found in Texas and several large metropolitan areas (New York, Miami, Chicago, etc.). As the Hispanic population continues to grow, particularly in the Southwest, this region may play the role for Hispanics that the South played for blacks. Tables 3,4, and 6 show that Hispanic students in the West now attend schools in which most children are from minority groups--sometimes schools with few non-Hispanic students. Already 63.4 percent of Latino pupils in the West are in predominantly minority schools. If Texas were added to the western region, as it should be for analysis of Hispanic segregation, the level of segregation would be significantly higher.

Hispanics are concentrated in a smaller number of states than blacks, and a good many states have very few Latino students so far and very few signs of

segregation. There are 17 states where at least 19 of every 20 Hispanic students are in schools that are 40-100 percent white.

The problems of segregation of Hispanic children are most severe in four states, which have large numbers of Latino children in schools that are 90-100 percent minority. New York State leads the list with 57 percent of its Hispanic students in this category, followed by Texas (40 percent), New Jersey (35 percent), and Illinois (32 percent). In 1980, the typical New York State Hispanic student was in a school with only 21 percent white students, the typical Texas Latino pupil in a school with 28 percent whites, the typical New Jersey child in a school with 26 percent whites, and the typical Illinois Latino student in a 36 percent white school. All of these levels of segregation worsened during the seventies. The only states to show any significant improvement were Wyoming, where an influx of whites drawn by the energy boom raised the white proportion and lowered the Hispanic proportion statewide, and Colorado, probably because of the Denver desegregation plan.

IMPLICATIONS

The school statistics show that, as the United States becomes an increasingly multiracial society, racial segregation remains the prevailing pattern in most regions with significant minority populations. Progress in desegregation for blacks in the South is offset by increasing segregation in the North. The large Hispanic population faces increasing educational segregation in the West and in states elsewhere with significant Hispanic populations. Where progress has been made, the changes appear to be related to policies and enforcement efforts by the courts and federal executive agencies. Pressure to enforce desegregation has diminished in recent years, and so has progress. There has been no serious effort to provide integration for Hispanics, and their segregation is rapidly increasing.

A further analysis, examining data from metropolitan areas, would show the degree to which the remaining problems of segregation are really problems of large metropolitan areas in the large states. If the progress achieved in the South is to be emulated in the North and West, clear policies for large metropolitan areas where the entire central-city school district and some older suburbs have become minority institutions must be resolved.

A quarter century after the beginning of significant southern desegregation with the Little Rock court order, the statistics from the South show that once unimaginable change is possible. The data from the North and West and the data for Hispanics from all parts of America show that little can be achieved without clear policies, effectively implemented.

Table 1

PERCENT OF BLACK STUDENTS IN
SCHOOLS WITH MORE THAN HALF MINORITY STUDENTS
BY REGION, 1968-1980

	U.S. TOTAL	SOUTHERN STATES	BORDER STATES	NORTHEAST	MIDWEST	WEST
1968	76.6	80.9	71.6	66.8	77.3	72.2
1972	63.6	55.3	67.2	69.9	75.3	68.1
1976	62.4	54.9	60.1	72.5	70.3	67.4
1980	62.9	57.1	59.2	79.9	69.5	66.8
change 1968 to 1980	-13.7	-23.8	-12.4	+13.1	-7.8	-5.4

Table 2

PERCENT OF BLACK STUDENTS IN
SCHOOLS WITH 90-100 PERCENT MINORITY ENROLLMENTS
BY REGION, 1968-1980

	U.S. TOTAL	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1968	64.3	77.8	60.2	42.7	58.0	50.8
1972	38.7	24.7	54.7	46.9	57.4	42.7
1976	35.9	22.4	42.5	51.4	51.1	36.3
1980	33.2	23.0	37.0	48.7	43.6	33.7
change 1968-80	-31.1	-54.8	-23.2	+6.0	-14.4	-17.1

Table 3

PERCENT OF HISPANIC STUDENTS
IN SCHOOLS WITH MORE THAN HALF MINORITY STUDENTS
BY REGION, 1968-1980

	U.S.	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1968	54.8	69.6	**	74.8	31.8	42.4
1972	56.6	69.9	**	74.4	34.4	44.7
1976	60.8	70.9	**	74.9	39.3	52.7
1980	68.1	76.0	**	76.3	46.6	63.5
change 1968-1980	+13.3	+6.4	**	+ 1.5	+14.8	+21.1

Table 4

PERCENT OF HISPANIC STUDENTS
IN SCHOOLS WITH 90-100 PERCENT MINORITY STUDENTS
BY REGION, 1968-1980

	U.S.	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1968	23.1	33.7	**	44.0	6.8	11.7
1972	23.3	31.4	**	44.1	9.5	11.5
1976	24.8	32.2	**	45.8	14.1	13.3
1980	28.8	37.3	**	45.8	19.6	18.5
change 1968-1980	+5.7	+3.6	**	+1.8	+12.8	+6.8

**Border state figures are not reported because the very small number of Hispanics in this region makes comparison misleading. Among the Hispanics who do reside in this region 2.8% were in 90-100% minority schools in 1980 and 23.2% attend predominantly minority schools.

Table 5

PERCENT WHITE IN
RACIAL COMPOSITION OF
SCHOOL ATTENDED BY TYPICAL BLACK STUDENT,
BY REGION, 1970-1980

	U.S.	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1970	32.0	36.7	27.4	31.5	23.6	30.1
1980	36.2	41.2	37.7	27.8	30.6	34.3
CHANGE 1970-1980	+4.2	+4.5	+10.3	-3.7	+7.0	+4.2

Table 6

PERCENT WHITE STUDENTS
IN SCHOOL ATTENDED BY TYPICAL HISPANIC STUDENT
BY REGION, 1970-1980

	U.S.	SOUTH	BORDER*	NORTHEAST	MIDWEST	WEST
1970	43.8	33.4	80.2	27.5	63.6	53.2
1980	35.5	29.5	66.4	27.0	51.9	39.8
CHANGE	-8.3	-3.9	-13.8*	-.5	-11.7	-13.4

(*very few Hispanics live in this region)

Table 7

PERCENT BLACK STUDENTS
IN SCHOOL ATTENDED BY TYPICAL WHITE STUDENT
BY REGION, 1970-1980

	U.S.	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1970	6.1	14.9	5.8	4.5	2.8	2.4
1980	8.0	17.5	8.3	4.8	4.5	3.4

Table 8

PERCENT HISPANIC STUDENTS
IN SCHOOL ATTENDED BY TYPICAL WHITE STUDENT
BY REGION, 1970-1980

	U.S.	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1970	2.8	2.8	.3	1.4	1.0	8.9
1980	3.9	4.1	.6	2.3	1.4	11.1

Table 9

PERCENT OF WHITE STUDENTS IN SCHOOLS 90-100 PERCENT WHITE, BY REGION, 1968-1980

	U.S.	SOUTH	BORDER	NORTHEAST	MIDWEST	WEST
1968	78.4	70.6	80.0	83.0	89.4	63.0
1972	68.9	38.0	75.9	82.9	87.5	56.0
1976	64.9	34.6	64.8	81.4	84.7	49.9
1980	61.2	35.0	64.1	80.2	81.2	43.3
change 1968-1980	-17.2	-35.6	-15.9	-2.8	-8.2	-19.7

Table 10

RACIAL COMPOSITION OF PUBLIC SCHOOL ENROLLMENT, NATION AND REGIONS, 1970-1980 DEPT. of EDUCATION SURVEY DATA

	American Indian	Asian	Hispanic	Black	White
1970					
Nation	.4%	.5%	5.1%	15.0%	79.1%
Northeast	.1%	.4%	4.4%	11.9%	83.3%
Border	.8%	.2%	.3%	17.3%	81.4%
South	.2%	.1%	5.5%	27.2%	66.9%
Midwest	.3%	.2%	1.4%	10.4%	87.6%
West	1.1%	1.6%	13.0%	6.3%	77.9%
1980					
Nation	.8%	1.9%	8.0%	16.1%	73.2%
Northeast	.2%	1.4%	6.6%	13.6%	78.3%
Border	1.5%	.8%	.7%	17.5%	79.5%
South	.3%	.7%	8.8%	26.9%	63.3%
Midwest	.6%	.9%	2.3%	12.4%	83.7%
West	1.8%	4.4%	19.0%	6.8%	68.0%

Table 11

BLACK AND HISPANIC ENROLLMENT IN PREDOMINANTLY MINORITY AND 90-100% MINORITY SCHOOLS, 1968-1980

Year	Predominantly minority		90-100% minority	
	BLACKS	HISPANICS	BLACKS	HISPANICS
1968	76.6%	54.8%	64.3%	23.1%
1970	66.9%	55.8%	44.3%	23.0%
1972	63.6	56.6%	38.7%	23.3%
1974	63.0%	57.9%	37.8%	23.9%
1976	62.4%	60.8%	35.9%	24.8%
1978	61.8%	63.1%	34.2%	25.9%
1980	62.9%	68.1%	33.2%	28.8%

TECHNICAL NOTES

The basic computer work for this report was done by DBS Corporation under subcontract to Opportunity Systems Inc. which prepared data then submitted for analysis by the Joint Center for Political Studies.

The regions used for analysis in this report include the following states:

SOUTH: Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi North Carolina, South Carolina, Tennessee, Texas, Virginia
BORDER: Deleware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia
NORTHEAST: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont
MIDWEST: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin
WEST: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming

EXCLUDED: Hawaii and Alaska, because of unique ethnic composition and distance from other states assigned to regions

Exposure Indices-- the tables reporting the racial average composition of schools attended by blacks, Hispanics, and whites are determined by calculations using the following alegebraic formula, producing a figure commonly called an exposure index:

Exposure Index Showing Typical Exposure of White Students to Blacks in a School District

$$E_{W/B} = \left(\sum_i \frac{W_i}{W_D}\right) X \left(\frac{b_i}{W_i + b_i}\right) \quad X \quad 100$$

W_i is the number of white students in the ith school

W_D is the number of white pupils in the district

b_i is the number of black pupils in the district

Mr. ORFIELD. Mr. Chairman and members of the committee, I would like to focus my testimony today on the analysis that I prepared for the subcommittee of desegregation trends in the U.S. from 1968-80. This analysis was prepared through the Joint Center for Political Studies in response to data provided by the Department of Education in response to a request by Chairman Edwards.

This data provides the first serious analysis of where we have gone as a country in school desegregation since the late sixties. It uses the most recent Federal data, by region, by State and for the Nation, for both blacks and hispanics.

What it shows is very different patterns in different parts of the United States. Those patterns appear to be related to the seriousness with which we have pursued desegregated in different regions.

There has been remarkable progress in the South, in the areas that were the most segregated in the 1960's and where most of the Federal enforcement activity and Federal litigation, Justice Department activity as well as private litigation was concentrated.

Changes have occurred in the South which are almost unimaginable if you go back to what people were saying in the sixties.

In 1962-63, at the time the first Civil Rights Act—the 1964 Civil Rights Act was drafted by President Kennedy's administration, 98 percent of black students in the South were in virtually 100 percent black schools. By 1968 after the Johnson administration enforcement of the Civil Rights Act that level had fallen to 78 percent. By 1980, it is down to 23 percent.

There are fewer black students in almost completely segregated schools of the South than in any other region of the country. If you look at predominantly minority schools, a similar pattern of dramatic change has taken place. During the 12 years from 1968-80, the percentage of black students in the South that are in schools that are more than 50 percent minority has fallen by 24 percent, far more progress than in any other region of the country.

The second place goes to the border States, the six states outside the South that had mandatory segregation laws until 1954. They also made dramatic gains from 1968-80.

What we find now is that the region that is by far the most integrated and has shown by far the most progress in the last generation is the area that was by far the most segregated in the beginning and where segregation seemed most entrenched. It is now the region where both black and white children are growing up with genuinely integrated educational experiences and have been for at least a decade in many major cities.

What we found in the rest of the country is much less positive. There are small gains in integration for black students during this period in the Middle West and the West and an actual reversal, a very high segregation and increasing segregation for black students in the Northeast, a region that was once considered the bastion of civil rights liberalism. It has by far now the most segregated for black students. More than twice as many black students in almost completely black schools than is true elsewhere.

If we go down to the State level, we find that States, even States that are very near to each other, are developing in very different ways toward integrated or segregated societies.

A number of States, even in the regions that haven't made tremendous progress, have themselves made great progress. There are about 14 States that have no significant problem of black segregation. Almost no black students in these States are in virtually all black schools. Most of the black students are in predominantly anglo schools.

In a number of cases the States that have had the most drastic reduction in segregation levels are the very States that have had the most dramatic court orders in the last decade. In all of the six States with significant black population that reduced segregation most sharply during this period, there were major court orders affecting the largest cities in the State and sometimes more than one of the larger cities.

In two of the States where the second and third largest reduction in segregation took place, Delaware and Kentucky, there were metropolitan-wide court orders implemented during the 1970's that dealt with the largest metropolitan area in the States.

There are other things obvious from these statistics. One is the progress in the South was not temporary. The South has not been resegregated since the large busing orders went in. This progress and the level of integration in the South has been maintained throughout this period with only very slight declines in the last couple of years, so what we see in these statistics is a kind of a fever chart of a remarkable and enduring social change.

There is backward movement in some areas. There has been a tremendous increase in integration in some States and no increase in others.

The figures, I regret to state, show that my own State of Illinois is the most segregated State for black students and it has made very little progress during the decade. Most of the highly segregated States are in the Northeast.

What are the causes of the changes and the lack of changes that are apparent in this data? Obviously, just working from the raw statistics themselves, what I say has to be treated as a general interpretation, but I think some of the results are so clear that there is an obvious conclusion.

The fact the South went from 98 percent black students in all black schools to 23 percent black students in such schools, and that the major breakthrough was made during the sixties and the first 2 years of the seventies is directly related to the enforcement of the school desegregation guidelines by the Johnson administration. This very rapidly increased integration in the South, through very difficult and tense processes including major court orders.

There were three major Supreme Court orders that put very strict requirements on the South during that period. In 1968, the Supreme Court said the South had to actually produce integration. It just couldn't have freedom of choice in the schools.

In 1969 the Supreme Court said the time had run out, that desegregation had to occur immediately; whenever a district was brought into court. In 1971, the Supreme Court authorized busing in large urban areas. Even the large urban area that was before them, metropolitan Charlotte, N.C. Those decisions had tremendous effects.

You can look at State after State and find a sudden increase in integration that was related to the serious enforcement of Federal policy by the executive branch or by the courts. Hundreds of districts were changed in a few months time in 1971, for example. It was a decisive break from the past.

You can also see the same thing in individual States. Yesterday I was looking at Kentucky, for example. All of the extremely segregated black in schools in the State were eliminated by the metropolitan Louisville orders in 1975. Severe segregation of black pupils came to a sudden end. If you compare the statistics for the State of Kentucky from 1974 to 1976 there is no other interpretation possible. In other words, one of the messages that is encouraging in this data is that if there are sound policies that aim at achieving integration it can be achieved, and it can be maintained.

There are many other reasons for the regional differences, but one of the most important is that there hasn't been any serious policy from the executive branch or the Justice Department to desegregate northern cities and cities of the West.

Very few such cases have ever been filed. No fund cutoffs have been imposed on major Northern cities. When the Government moved to do that during the Carter administration, the Congress took the power of enforcing the 1964 Civil Rights Act away from the Education Department.

We haven't made a serious effort in terms of Federal policy to do this and it is extremely difficult to bring those cases by private litigation. Also, we have different kinds of urban societies in the North. The central cities tend to be much more dominated by minority population, particularly in the public schools and to have much larger suburban rings relative to the cities of the South.

The means remedies in the North for some of the most serious types of segregation would require some kind of involvement of suburbs or some kind of housing action and there just has been no leadership in either the housing field or even on voluntary interdistrict school changes of the type used in Milwaukee. In only two States there has been leadership on those issues.

Obviously, policies can have an effect. Southern education has been changed.

One of most disturbing things about these statistics that were prepared for the subcommittee is what they show about our very rapidly growing Latino populations. They show Hispanics in the United States have had a major increase in school segregation in all regions of the United States; in every region. In those regions where they were the most integrated in 1968, in the West and the Midwest, segregation is rising most rapidly. Across the country Hispanics are now, by two of the measures in this report, more segregated than black students.

In other words, before we had really begun to solve the problem of isolation and segregation and discrimination against blacks in many of our major cities in the North, we have a second group emerging which is rapidly becoming very segregated itself. Even though the Supreme Court stated in the 1973 *Denver* decision that Hispanics should be desegregated in integration plans, there have been relatively few orders and very little effort to enforce this constitutional requirement.

Hispanics were one-twentieth of our student enrollment in 1968. By 1980, they were one-twelfth of the student enrollment. They will be a substantially larger fraction in the future. As they become a larger minority group, and they become increasingly segregated, we will have some of the same dilemmas in public school as we faced with the education of black children. There will be separate and highly segregated school systems where they are not likely to be treated equally.

The trend for Hispanics does not show any really encouraging aspects. Almost no States show significant progress. The trends are strongly negative.

The message I drew from looking at these statistics is that the Federal role and Federal enforcement activities both by the executive branch and the courts have been extraordinarily important and that any efforts to limit that role either in the way of regulation and compliance or in the way of ending incentives in the face of the tremendous amount of segregation that remains, is likely to have very negative effects on school integration, particularly in the regions that have not faced the problem of desegregation to any significant degree at this point.

Mr. EDWARDS. Thank you very much, Professor Orfield.

The gentleman from Illinois, Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

I want to join the chairman in commending you for a fine report and I welcome you here. This is an excellent report, and one could expect no less from you with your background and reputation, coming from such a fine school which just happens to be in my district.

It is a real pleasure to see you here.

Your bottom line, I think, is obvious and clear. That is that there has been no leadership in the North and Northeast as far as desegregation is concerned, particularly in the large industrial cities like Chicago.

That is the bottom line.

But Mr. Bradford Reynolds of the Civil Rights Division of the Justice Department was here and waxed rather eloquently about the value of a volunteer desegregation plan. That came out of the district court and Judge Shadur.

In light of these statistical studies and in the light of your closeness with the Chicago scene, what would be your assessment of the possibilities of success of that so-called volunteer plan?

Mr. ORFIELD. Congressman Washington, in 1978, I was asked by the Illinois State Board of Education to assess a similar plan that the Chicago Public Schools prepared called access to excellence, which involve a variety of voluntary techniques across the city.

Mr. WASHINGTON. It was almost the same.

Mr. ORFIELD. It was almost the same plan.

We assembled a group of experts from across the country to predict what would happen when it was implemented and we reported to the State board of education it would make no significant impact on segregation. I was then asked by the State Office of Education to study what actually happened at the end of the year. I did a report for him which showed it reduced the segregation of blacks in Chicago by substantially less than 1 percent. I would expect that

the voluntary plan that is being implemented, under the agreement between the Chicago School Board and the Justice Department, will have a similar effect.

The basic problem with segregation in Illinois is the problem of Chicago, because two-thirds of the black and Hispanic students in the State live in Chicago and are in an extremely highly segregated school system where no action has ever been taken beyond purely voluntary measures which have not worked.

I believe that voluntary components of a desegregation plan can be very useful, as testimony from Buffalo indicated, for example. There are perhaps a handful of communities where a tremendous mobilization has been made in voluntary efforts. Some progress has been made, such as in Milwaukee. In most cities voluntary efforts have had negligible impact.

I think, given Chicago's history and its previous record with voluntary desegregation, voluntary measures are not likely to have any significant effect in Chicago.

I would like to give to you a report that I have done for the Institute of Government at the University of Illinois asking, "Why are Illinois schools the most segregated?" which goes into some of the factors.

Mr. EDWARDS. Without objection, the information will be inserted in the record.

[The information follows:]

WHY ARE ILLINOIS SCHOOLS THE MOST SEGREGATED?

(By Gary Orfield, University of Chicago)

Federal statistics for the 1980–81 school year show that black students in Illinois are more likely to be in intensely segregated schools, where 90 to 100 percent of the children are from minority groups, than students in any other state. Latino school children in Illinois are also highly segregated, with the state ranking number four in the U.S. and showing a rapid increase in segregation levels. Thus Illinois has segregated black students far more than any state in the South and Latino students more than any state in the West. Why should a state with a historic record of support for civil rights laws and a State Board of Education policy requiring desegregation, at least in the smaller cities, now come in at the bottom of the national statistics?

Segregation Levels in 1980–81.—The typical black student in Illinois during the 1980–81 school year attended a school where 81 percent of the students were from minority groups. This compared to a national average of 64% minority enrollment and an average in the South of 59%. Segregation of blacks had been even more extreme in Illinois a decade earlier when the typical black student was in an 85 percent minority school.

Among Latino students the segregation was less intense, but still among the nation's worst. The typical Latino student in the state was in a school that was 64 percent minority. In contrast to the small improvement in black segregation during the 1970's however, the trend for Latinos was sharply negative. In 1970 the typical Latino student in the state had been in a well-integrated school with 50 percent white children. Thus, Latinos were rapidly becoming more isolated.

Perhaps the most remarkable statistic for black students in Illinois was that 54 percent of them were in schools that were virtually all-minority, with 0–1 percent white students. Another 8.5 percent were in 90–99 percent minority schools. Of the state's 414,000 black pupils in public schools, only 26 percent were in majority white schools. The percent of black students in 99–100 minority schools in Illinois was almost four times as high as the percent of Mississippi black students in such schools. Many Illinois blacks are from Mississippi and came North in search of a less segregated society, only to find their home state become substantially more integrated and the public schools of their adopted state to become far more segregated.

Relatively few Illinois Hispanic students were in virtually all-minority schools in 1980, although the number had risen from 1 percent in 1970 to 3 percent in 1980. The dramatic increase came in the number of Latinos in schools from 90–99 percent minority, which rose from 5,500 in 1968 to 34,600 in 1980. By 1980, 29.4 percent of all Illinois Latinos attended such schools. Almost two-thirds of the state's Latino students were in schools where most of the children were from minority groups. While the situation was less dramatic than it was for blacks, the trend was clearly toward increasing segregation.

Why Is Illinois Segregated?—The problem of the extremely high level of segregation in Illinois has a number of causes and these general state-wide statistics should not obscure very wide diversity within the state and a fundamental difference in school segregation between metropolitan Chicago and most other Illinois communities. The Chicago area is home to the great majority of blacks and Latinos in Illinois and is the focal point for segregation. Segregation in the Chicago area can be traced to intense residential segregation, ghettoization process that have make much of Chicago and a number of suburbs segregated minority communities with all-minority schools, the large number of separate school districts, the lack of any mandatory desegregation since the *Brown* decision, and various policies and practices of the city school officials which intensified rather than lessened segregation.

In racial terms, as in many other ways, Illinois is made up of three quite different regions—Chicago, the Chicago suburban ring, and downstate. The 1980 Census showed that the city contained about 26 percent of the state's total population but 71 percent of its black population and 66 percent of its Latino population. Less than a sixth of the state's whites were Chicagoans. Taken as a whole, the Chicago metropolitan area was home for 84 percent of Illinois blacks and 91 percent of Latinos. Thus the downstate region where 44 percent of the state's whites lived had only 16 percent of the total black population and 9 percent of the Latino residents.

This distribution of families had a powerful effect on public school enrollment patterns. During the 1980–81 school year about one Illinois student in five (20.9 percent) was black and about one in sixteen (6.3 percent) was Hispanic. Among the state's 1.98 million public school students, there were 414,000 blacks and 125,000 Latinos. The most fundamental problem for desegregation in the state was that Chicago contained about two-thirds of the black and Latino students (65 percent of blacks and 64 percent of Latinos) but only one-sixteenth of the white students (6 percent). Many of the remaining minority students were enrolled in segregated suburbs with their own minority school systems or in racially changing suburban school districts.

The nature of distribution of pupils within the state means that Illinois can have an extremely high level of segregation overall in spite of some exemplary local efforts. Some Illinois communities, including Evanston and Champaign-Urbana, were among the nation's pioneers in communitywide desegregation, magnet schools, and busing in the sixties and have remained well integrated to this day. The State Board of Education succeeded in requiring desegregation under state policies in many of the state's smaller communities. There is a federal court order in the state capital, Springfield. If downstate Illinois were a separate state, its record on desegregation would look much more like that of Wisconsin or Iowa than that of the Chicago region, except for East St. Louis

East St. Louis.—The largest center of segregation in downstate Illinois is East St. Louis, a nearly bankrupt and economically depressed old industrial satellite city of St. Louis. By 1978, 96 percent of East St. Louis' 21,600 students were black. Naturally enough, in a school district with this population, 97 percent of the minority students were in schools that were more than 90 percent black and 78 percent of the minority students were in schools that were 99 to 100 percent black. About one-twentieth of the state's black students were in this district. Obviously, desegregation in East St. Louis would be impossible without involving surrounding school districts. Although the city of St. Louis school board is now involved in federal court litigation aimed at winning city-suburban desegregation in the Missouri side of the metropolitan area, there has been no effort toward this goal on the Illinois side.

Residential Segregation in Metropolitan Chicago.—Chicago has long been one of the nation's most residentially segregated communities, a community where about nine in every ten black families would have to move to achieve a random distribution of population. It has been found guilty of intentional segregation of minority families in its massive public housing program. The 1980 Census showed that the city's historic pattern of providing housing for blacks by expanding the ghetto along its borders continued to be the dominant fact of life in the real estate market and that the ghettos had expanded into large additional areas in the South and West Sides. The Census also showed the development of substantial areas of segregated Latino housing in the city and rapid racial transition and ghettoization in a number

of suburbs on the South and West Sides. Due to intense efforts of civil rights gouups there was an increase both in the number of black families living in white suburbs and in the number of stably integrated communities in the metropolitan region during the seventies, but the overall pattern remained one of severe residential segregation.

Lack of a Desegregation Plan in Chicago.—Although the racial composition of the Chicago school system creates severe barriers to full desegregation within the city boundaries the fact remains that Chicago is one of the few big cities that has never been required to do any mandatory desegregation by federal or state officials or the federal courts. It is not because the issue has not been raised. There were massive demonstrations and a formal request for sanctions to the federal government in the 60's and federal authorities did cut off federal aid in 1965, only to give it back five days later under intense political pressure and with no real concessions from Chicago. The State Board of Education, concerned over Chicago's continual defiance of state desegregation rules, threatened to cut off state aid in 1978 but backed down and accepted a voluntary plan that did not reduce segregation by even 1 percent. In both cases, the political power of the Chicago machine was an extremely important element in preserving segregation in spite of federal and state laws.

The last round in Chicago began when HEW and the Justice Department concluded that there was a history of serious constitutional violations in Chicago and the Chicago School Board, with temporary black leadership, signed a consent agreement in federal court to avoid a law suit. The Chicago school board has not complied with the Consent Agreement and the Justice Department in the Reagan Administration has announced that it will not attempt to enforce it. So far, the court has not acted.

Chicago has not implemented any significant desegregation within its boundaries because no agency of government has yet effectively required any action. Frequently enforcement actions have been initiated but political power has helped to kill the efforts. Part of the reason for Illinois' very high level of segregation is that Chicago has successfully exercised a great deal of political power to defend its segregation. Although segregation could not be eliminated within the city, it could be very considerably reduced at it was, for example, in the St. Louis school district, with a very similar racial composition in 1980. Only one major city in the U.S. has desegregated without coercion. Chicago white leaders have so far been able to block any coercion.

Mr. WASHINGTON. Could we have your suggestions on what can be done to remove the pattern in the North?

Mr. ORFIELD. The segregation is worst in the large cities and these cities are terribly important to blacks and Hispanics and are not very important to whites any more.

In Illinois, two-thirds of the black and Hispanic students are in Chicago but only one-sixteenth of the whites in the State. It is less now. That was in 1980. The problems are so entrenched and so vast that I think a whole variety of techniques need to be used.

One is a mandatory desegregation plan which would require litigation, given the fact no city except Seattle has done it without some kind of mandatory order and that plan was opposed by the Reagan Justice Department.

I think there have to be educational components in a desegregation plan and it is terribly important when it is done in a city like Chicago, which has almost bankrupt public schools, that there be Federal aid to finance those educational components. Otherwise, there will be desegregation without any educational components, which would be idiotic from every perspective, liberal, conservative, whatever.

I think it is very important that we have leadership in housing. As you know, the Chicago metropolitan area is perhaps the Nation's most segregated in residential terms. The 1980 census shows the black and Latino areas of Chicago are expanding fast and significant parts of the southern and western suburbs are going through the same process of rapid expansion of segregation residentially that we saw in the city ever since World War I.

We have to work on that issue. There has to be involvement in the suburbs at least in a voluntary way to achieve substantial reduction of racial isolation and indeed if there is going to be avoidance of a tremendous segregated educational process in the suburbs, there has to be involvement between individual suburbs.

It is a process that needs to be addressed on any number of levels, and I think it requires leadership. It is wrecking our community, having a devastating effect on our children, on support for public education. We realize we are not going to be able to overcome all the problems we created in 70 years of building ghettoes in the space of 2 or 3 years. But if we don't address them, they will be worse every year.

Mr. EDWARDS. Thank you, Mr. Washington.

I think your report is a landmark report and it will certainly be recognized throughout the United States as a very important contribution, pointing out that we really have a time bomb here, and a deteriorating situation in the most populace part of the United States.

It is not like the 11 Southern States. There are a lot of people in the Northeast, Middle West, and in California. I know in my home State of California the situation has deteriorated rapidly and nothing is being done.

Certainly, is your testimony that when the Federal Government doesn't do its part, offer leadership and sometimes money, then the task just doesn't get done.

Is that correct?

Mr. ORFIELD. That is right.

I have been working in many of these States and studying many others. I have been to many State capitals and asked the State education authorites what they are doing about the problem. Almost all of them know it is a problem, and know something should be done, but most of them tell me, "Politically, we can't touch this, it is too hot."

Even though people know it would be well to do it, you can go to State capital after State capital, and there is not one single person in State government working on school integration. Almost always if there is a person, he is funded by title IV of the 1964 Civil Rights Act, which is proposed for zero funding in the President's budget. All that person does is go around giving human relations training.

The States have been found guilty of causing and contributing to segregation in a number of major school cases. To turn over funds to them without any instruction attached and to believe that they are suddenly going to have political courage and they are suddenly going to do the exact opposite of what they have been found guilty of doing in Federal court is naive to the extreme.

I think there are States that have provided some leadership in this field. It would not take all the fingers of one hand to count them off.

Mr. EDWARDS. I am sorry, but that is true.

If there are no further questions, we thank you very much.

[Whereupon, at 12:35 p.m., the subcommittee adjourned subject to the call of the Chair.]